

Vol. XVII

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WANDA JENKINS, ET AL

Plaintiffs,

VS.

CIVIL NO. M-84-193-CA

RAYMARK INDUSTRIES, INC. and
RAYBESTOS-MANHATTAN, ET AL,

Defendants,

-TRIAL PROCEEDINGS-

HEARD AT: Marshall, Texas

ON: March 21, 1986

MORNING SESSION

1 // ~~THE~~ PARTY --

2

3 THE COURT: I UNDERSTAND.

4

5 MR. BALDWIN: SHALL WE PROCEED, YOUR HONOR?

6

7 THE COURT: YES, SIR.

8

9 BY MR. BALDWIN:

10 Q MR. CASTLEMAN, NEXT EXHIBIT. THESE ARE A
11 CONTINUATION OF THE OWENS-CORNING DOCUMENTS --

12

13 MR. SADLER: YOUR HONOR, CAN WE DIM THE
14 LIGHTS?

15

16 THE COURT: YES, SIR. GENTLEMEN, I HAVE THE
17 MARSHAL DOWNSTAIRS AND THE CLERICAL PEOPLE
18 DOWNSTAIRS, SO YOU'RE JUST GOING TO HAVE TO
19 ASSIST US WITH MANAGING OUR BUSINESS.

20

21 BY MR. BALDWIN:

22 Q NOW -- CAN YOU FOCUS IT A LITTLE BETTER?
23 PICKING UP WHERE WE LEFT OFF YESTERDAY, DR.
24 CASTLEMAN, THIS IS PLAINTIFFS' EXHIBIT 394, AN
25 INTEROFFICE MEMORANDUM OF OWENS-CORNING WITH

1 REFERENCE TO THE WARNING LABEL OF KAYLO DATED
2 DECEMBER 5, 1966, AND COULD YOU JUST READ FOR THE
3 JURY THE HIGHLIGHTED PORTION OF THAT?

4 A AS YOU SEE IT SAYS, "I BELIEVE IT IS MOST
5 IMPORTANT TO HAVE A PROMPT DECISION ON LABELING
6 KAYLO. IS THERE ANYTHING FURTHER WE CAN DO TO
7 HELP?"

8 Q NEXT EXHIBIT. THE FIRST ATTENTION OF
9 OWENS-CORNING BEING GIVEN TO LABELING KAYLO WAS
10 IN 1964, I BELIEVE, IS THAT CORRECT?

11 A YES, ACCORDING TO THE EXHIBITS.

12 Q NOW, 394V, WHICH IS ANOTHER MEMORANDUM FROM
13 OWENS-CORNING, DATED JUNE 21, 19 -- CAN YOU MAKE
14 THAT DATE OUT, DR. CASTLEMAN?

15 A 1967.

16 Q ALL RIGHT. IT'S NOT REAL LEGIBLE, SO I
17 WOULD LIKE TO WITHDRAW IT AND PUT IN THE LEGIBLE
18 PORTION OF IT, IF YOU WOULD.

19

20 THE COURT: YOU'RE NOT WITHDRAWING THE
21 EXHIBIT, ARE YOU?

22

23 MR. BADLWIN: NO. FROM THE MACHINE.

24

25 THE COURT: ALL RIGHT.

1

2 BY MR. BALDWIN:

3 Q NOW, WE'RE LOOKING AT A RETYPE OF THE SAME
4 EXHIBIT THAT WE JUST REFERRED TO, BUT TYPED ON A
5 TYPEWRITER WHERE YOU CAN READ IT AND WOULD YOU
6 READ THIS PARAGRAPH RIGHT HERE STARTING WITH "D.
7 W. LADD"?

8 A "D. W. LADD POINTED OUT THAT WE HAVE A TEN
9 MILLION DOLLAR KAYLO OPERATION. HE WANTS US AS A
10 TEAM TO BE IN THE POSITION TO TELL MANAGEMENT
11 WHAT FIBERS WE CAN USE TO RE-ENFORCE KAYLO IF AND
12 WHEN THE DAY ARRIVES WHEN THE WHOLE INDUSTRY IS
13 FORCED TO REMOVE ASBESTOS FROM THEIR PRODUCTS.
14 HE DOESN'T WANT O.C.F. TO WAIT UNTIL D-DAY TO
15 START LOOKING FOR SUBSTITUTE FIBERS."

16

17

18

19

20

21

22

23

24

25

1 BY MR. BALDWIN:

2 Q NEXT EXHIBIT. THIS IS PLAINTIFFS' EXHIBIT
3 394-W, A LETTER OF OCTOBER 9, 1967, FROM THAT
4 SAME LADD THAT WAS REFERRED TO PREVIOUSLY, IS
5 THAT CORRECT?

6 A YES, THE EXECUTIVE, D. W. LADD.

7 Q AND WOULD YOU READ THE PERTINENT HIGHLIGHTED
8 PORTIONS OF THAT LETTER SIR?

9 A IT SAYS, "AS YOU ARE WELL AWARE, THE
10 GOVERNMENT WILL PROBABLY BLOW THE WHISTLE
11 RELATIVE TO THE USE OF ASBESTOS IN THE NOT TOO
12 DISTANT FUTURE, AND BEFORE WE EMBARK UPON A
13 SUBSTANTIAL EXPANSION PROGRAM AT BERLIN, AND/OR
14 CONSIDER PUTTING A NEW FACILITY IN THE SOUTHWEST,
15 WE HAD BETTER BE DAMN SURE THAT WE HAVE AN ANSWER
16 TO THE ASBESTOS THREAT. WORK HAS BEEN DONE ON
17 THIS IN THE PAST, TO DATE THERE HAS BEEN NO
18 SUCCESSFUL ANSWER."

19 Q NEXT. REFERRING THERE TO THE ASBESTOS
20 THREAT, WERE THEY?

21 A YES, SIR.

22 Q THIS IS PLAINTIFFS' EXHIBIT --

24 MR. SADLER: 394-X.

1 BY MR. BALDWIN:

2 Q -- 394-X. THE FIRST PAGE OF A FEASIBILITY
3 STUDY FOR OWENS-CORNING?

4 A YES, 1968.

5 Q THEN GO TO PAGE SEVEN, I BELIEVE IT IS.
6 THIS IS PAGE TWO OF THAT SAME EXHIBIT, WHERE IT
7 SAYS, "RECOMMENDATIONS AND VISITS TO
8 JOHNS-MANVILLE RESEARCH CENTER HAS ALREADY BEEN
9 MADE TO APPRAISE THE FILTER PROCESS. THE VISIT
10 MUST BE FOLLOWED UP BY AN O.F.C. PREPARED COST
11 PROJECTION AND PLANT VISIT. A VISIT SHOULD ALSO
12 BE MADE TO PHILIP CAREY TO APPRAISE THE BONDING
13 AGGREGATE PROCESS. IT TOO SHOULD BE FOLLOWED UP
14 BY A COST PROJECTION, AND IF POSSIBLE, A PLANT
15 VISIT."

16 NOW, DOCTOR, DOES THAT OR NOT INDICATE TO
17 YOU WHAT HAS BEEN SUGGESTED BY THE OTHER
18 DOCUMENTS, THAT THERE IS A FREE EXCHANGE BETWEEN
19 THE MEMBERS OF THE INDUSTRY? HERE YOU HAVE
20 OWENS-CORNING TALKING ABOUT VISITING A
21 JOHNS-MANVILLE PLANT, AND A PHILIP CAREY PLANT,
22 THEIR EMPLOYEES, TO GATHER INFORMATION AND TO
23 EXCHANGE INFORMATION, IS THAT CORRECT OR NOT?

24 A YES. THERE'S OBVIOUSLY EXCHANGE OF
25 INFORMATION GOING ON AT THE TECHNICAL LEVEL

1 | BETWEEN THESE COMPANIES.

2 Q AND THIS IS THE MANAGEMENT LEVEL WE'RE
3 TALKING ABOUT HERE, ISN'T IT?

4 | A YES.

5 Q NEXT ONE. WE'RE GOING NOW TO PAGE SEVEN OF
6 THE SAME DOCUMENT. "IF AND ONLY IF THE ASBESTOS
7 THREAT REACHES THE DANGER POINT WOULD WE THEN
8 WANT TO RECONSIDER AN ASBESTOS-FREE PRODUCT, SUCH
9 AS MULTI-TEMP FOR THE HIGH TEMPERATURE INSULATION
10 MARKET." AND AGAIN, ARE THEY ADDRESSING THE
11 ASBESTOS PROBLEM THAT WE REFERRED TO EARLIER IN
12 THE CORRESPONDENCE AND IN THIS MEMORANDUM?

13 A YES.

14 Q AND DO OR NOT THEY CONSIDER THAT AS A
15 THREAT?

16 A THEY CONSIDER IT AS A THREAT TO THEIR
17 BUSINESS.

18 Q NEXT NUMBER. THIS DOCUMENT IS TOO LONG TO
19 FIT IN THE MACHINE, AND I'LL JUST HAVE TO READ
20 IT. IT'S 393-Y, A MEMORANDUM ON CORPORATE
21 PLANNING TO R. F. SHANNON. AND WHO HAVE WE FOUND
22 THAT MR. SHANNON IS?

23 | A HE'S ONE OF THE EXECUTIVES IN THE COMPANY.

24 Q AND ON THE SECOND PAGE OF THE DOCUMENT IT
25 SAYS, "ASBESTOS, THE CURRENT REINFORCED FIBER OF

1 CALCIUM SILICATE IS REPORTED TO CAUSE CANCER.
2 BECAUSE OF ADVERSE PUBLICITY, POSSIBLE COURT
3 ACTIONS, AND FOR PROTECTION OF OUR POSITION IN
4 THE CALCIUM SILICATE MARKET, IT IS NECESSARY FOR
5 O.C. TO EVENTUALLY REMOVE ASBESTOS FIBERS
6 FROM KAYLO." WHAT DATE IS THAT?

7 AND IS THAT AN ACKNOWLEDGEMENT BY
8 OWENS-CORNING, SIR, THAT ASBESTOS IS NOT ONLY
9 DANGEROUS BUT THAT IT WILL CAUSE CANCER?

10 A YES.

11 Q AS USED IN THEIR PRODUCT KAYLO?

12 A YES.

13 Q NEXT NUMBER.

14

15 MR. CROSBY: JUST FOR THE RECORD, YOUR
16 HONOR, I THINK MR. BALDWIN REFERRED TO THAT AS
17 393-Y, AND IT'S 394-Y. MR. BALDWIN, COULD YOU
18 TELL ME WHAT PAGE YOU WERE READING FROM, PLEASE?

19

20 MR. BALDWIN: THE SECOND PAGE, I BELIEVE IT
21 WAS.

22

23 MR. CROSBY: THANK YOU, SIR.

24

25 BY MR. BALDWIN:

1 Q AND NOW 394-Z. AND IS THERE A SECOND PAGE
2 TO THAT DOCUMENT? AND THE SECOND PAGE OF THE
3 LAST DOCUMENT, "LET'S GET RID OF ASBESTOS IN THE
4 INSULATION INDUSTRY AND WE CAN THEN GET RID OF
5 OTHER COSTLY PROBLEMS WHICH ARE BEGINNING TO
6 DEVELOP."

7 AND AGAIN, IS THAT AN INTERNAL MEMORANDUM IN
8 THE OWENS-CORNING FILE SHOWING THAT THEY HAVE NOW
9 FINALLY AGREED AND REALIZED THAT ASBESTOS IS
10 DANGEROUS, AT LEAST FROM A MANAGEMENT STANPOINT?

11 A YES.

12 Q MANAGEMENT LEVEL?

13 A YES. THIS IS IN 1969.

14 Q NEXT LETTER. AND THIS AGAIN IS 394-AA, AN
15 INTERCOMPANY CORRESPONDENCE IN OWENS-CORNING WITH
16 REFERENCE TO THE ASBESTOS LABELING, DATED
17 SEPTEMBER, 1970, SOME SIX YEARS AFTER THE FIRST
18 TALK ABOUT LABELING THEIR PRODUCT. AND WHAT DOES
19 THAT MEMORANDUM SAY?

20 A THIS IS UNDER THE SUBJECT "ASBESTOS
21 LABELING." THIS IS TO THE CORPORATE PHYSICIAN,
22 KONZEN, "REFERENCE IS MADE TO YOUR MEMO OF
23 SEPTEMBER 15TH REGARDING THE WARNING LABEL THAT
24 SHOULD APPEAR ON KAYLO. ARE YOU SAYING THAT WE
25 HAVE TO DO THIS NOW? I NATURALLY WOULD LIKE TO

1 DELAY THIS REQUIREMENT AS LONG AS POSSIBLE."

2 Q NEXT MEMORANDUM. 394-BB, SEPTEMBER 25,

3 1970, REFERENCE ASBESTOS LABELING, OWENS-CORNING

4 INTERNAL MEMORANDUM.

5 A HERE DOCTOR --

6 Q READ THE HIGHLIGHTED PART, PLEASE.

7 A HERE DR. KONZEN REPLIES.

8 Q HE'S REPLYING TO THE OTHER MEMORANDUM WE

9 JUST SAW?

10 A YES. A FEW DAYS LATER IN 1970, IN SEPTEMBER,

11 HE SAYS, "FROM A HEALTH STANDPOINT I FEEL THAT WE

12 SHOULD LABEL THE PRODUCT AT THIS TIME. MY COPY

13 OF THIS LETTER -- BY COPY OF THIS LETTER I

14 SUGGEST TO MR. LOGAN A COMMENT CONCERNING THE

15 LEGAL NEED FOR SUCH A LABEL."

16 Q NEXT NUMBER, PLEASE. SO THEN WOULD THAT

17 EPISODE ON THE LABELING WHERE THEY HAVE WAITED

18 FROM 1964 TO 1970, AND THEY'RE STILL DEBATING AND

19 LAMENTING OVER WHETHER TO LABEL, WOULD THAT BE

20 EVIDENCE, DR. CASTLEMAN, OF A FURTHER CONSPIRACY

21 OF SILENCE FALLING IN YOUR CATEGORY ONE?

22

23 MR. CROSBY: EXCUSE ME, YOUR HONOR -- I'M

24 SORRY. I THOUGHT YOU WERE THROUGH, MR. BALDWIN.

25 I THOUGHT YOU HAD FINISHED YOUR QUESTIONING, AND

1 THEN I HEARD YOU MAKE A SOUND LIKE YOU HADN'T.
2 IF YOU HADN'T, PLEASE GO AHEAD.
3

4 MR. BALDWIN: WELL, I HADN'T.
5

6 MR. CROSBY: I'M SORRY. I'LL WAIT.
7

8 MR. BALDWIN: WHILE WE'RE INTERRUPTED, I
9 THINK DR. CASTLEMAN CAN TAKE THE WITNESS STAND
10 BACK AND WE CAN TURN THE LIGHTS ON, YOUR HONOR.
11

12 THE COURT: WELL, GO AHEAD AND MAKE YOUR
13 OBJECTION, COUNSEL.
14

15 MR. CROSBY: MY OBJECTION IS, YOUR HONOR,
16 THAT THE WITNESS IS ASKED TO EXPRESS AN OPINION
17 ABOUT FACTS NOT IN EVIDENCE AND ABOUT FACTS THAT
18 ARE NOT SO, BECAUSE OWENS-CORNING WARNED IN 1964,
19 AGAIN IN 1966, AND REVISED IN 1970, AND THE
20 INSINUATION IS THAT WE DIDN'T WARN AT ALL.
21

22 THE COURT: OVERRULE THE OBJECTION. THE
23 JURY HAS ALL THE EVIDENCE BEFORE IT.
24

25 BY MR. BALDWIN:

1 Q WELL, DR. CASTLEMAN, IN VIEW OF THAT
2 STATEMENT BY COUNSEL, DOES IT SEEM STRANGE TO YOU
3 THAT IF THEY WERE WARNING IN 1964 OR '70 THAT
4 THEY WOULD BE WRITING MEMORANDUMS?

5

6 THE COURT: MR. BALDWIN, THAT IS ARGUMENT.

7

8 BY MR. BALDWIN:

9 Q MY QUESTION, DR. CASTLEMAN, IS, THIS WHOLE
10 BUSINESS OF THE LABELING EPISODE, THE FACT THAT
11 THEY FIRST CONSIDERED IT IN 1964 AND PUT IT OFF
12 FOR SOME, AT LEAST ACCORDING TO THEIR OWN COMPANY
13 MEMORANDA, THAT THEY WOULD PUT IT OFF,
14 CONSIDERATION OF LABELING, FOR SIX YEARS,
15 INDICATE TO YOU THAT THAT IS FURTHER EVIDENCE OF
16 THE CONSPIRACY OF SILENCE FALLING UNDER CATEGORY
17 ONE AND CATEGORY THREE, THAT IS, FURTHER EVIDENCE
18 OF A COVER UP OF THE DANGERS OF ASBESTOS, AND
19 FURTHER EFFORT TO PROTECT THE INDUSTRY?

20 A YES.

21

22

23

24

25

1 Q NOW, WE'LL TURN TO THE WORKMANS'
2 COMPENSATION CLAIMS AGAINST OWENS-CORNING. WOULD
3 YOU -- DO YOU HAVE ANY EVIDENCE THAT THERE WERE
4 ANY WORKMANS' COMPENSATION CLAIMS FILED AGAINST
5 OWENS-CORNING FIBREGLASS DURING THE YEARS 1957 TO
6 '63?

7 A YES, I DO.

8 Q AND WITHOUT -- I THINK IT WILL COME AS SOME
9 RELIEF TO BOTH THE JURY AND THE COURT IF WE DON'T --
10 YOU DON'T INTEND TO SHOW THE JURY ALL THOSE
11 DOCUMENTS IN THAT FILE, BUT THE FILE PRESENTLY
12 BEFORE YOU, DOES THAT CONTAIN THE WORKMANS'
13 COMPENSATION CLAIMS OR THE COURT DOCUMENTS
14 REFERRING TO THE WORKMANS' COMPENSATION CLAIMS
15 ABOUT WHICH YOU TALKED?

16 A YES. THIS IS AN EXAMPLE. THIS IS A SINGLE
17 CLAIM FILE OF A WORKMANS' COMPENSATION PROCEEDING
18 IN THE STATE OF CALIFORNIA INVOLVING A NUMBER OF
19 THE DEFENDANTS AND AN INSULATION WORKER WHO FILED
20 A CLAIM IN 1957 CLAIMING THAT HE HAD ASBESTOSIS
21 FROM WORKING FOR THEIR CONTRACTING DIVISIONS.

22 Q ALL RIGHT, SIR. COULD YOU BRIEFLY SUMMARIZE
23 THE WORKMANS' COMPENSATION CLAIMS THAT HAVE BEEN
24 FILED AGAINST OWENS-CORNING FIBREGLASS?

25

1 MR. CROSBY: EXCUSE ME, DOCTOR. COULD YOU
2 GIVE US AN EXHIBIT NUMBER, PLEASE?

3

4 THE WITNESS: THE CLAIM FILE -- THIS IS THE
5 CLAIM FILE OF JAMES W. RILEY IN CALIFORNIA. IT'S
6 399S.

7

8 MR. CROSBY: THANK YOU, DOCTOR.

9

10 BY MR. BALDWIN:

11 Q WOULD YOU EXPLAIN THE RILEY FILE FOR US,
12 DOCTOR, WITHOUT US HAVING TO GO THROUGH EACH OF
13 THOSE PIECES OF PAPER?

14 A CERTAINLY. MR. RILEY WAS A MAN WHO HAD DONE
15 INSULATION WORK FOR OVER THIRTY YEARS, AND HE HAD
16 WORKED FOR A NUMBER OF DIFFERENT CONSTRUCTION
17 CONTRACTING FIRMS, INCLUDING THE CONTRACTING
18 DIVISIONS OF OWENS-CORNING, PHILIP CAREY,
19 ARMSTRONG CORK, AND FIBREBOARD, AND WHEN HE FILED
20 A COMPENSATION CLAIM FOR ASBESTOSIS HE NAMED ALL
21 THESE COMPANIES AS WELL AS TWO DOZEN OR MORE
22 OTHERS AS DEFENDANTS. HE HAD TO LIST ALL THE
23 COMPANIES HE HAD WORKED FOR WITH ASBESTOS
24 INSULATION PRODUCTS IN HIS COMPENSATION CLAIM,
25 AND EVERY TIME A HEARING WAS POSTPONED OR

1 SCHEDULED OR RESCHEDULED, EVERY TIME A MOTION WAS
2 MADE, EVERY TIME A RULING WAS MADE IN THE COURSE
3 OF THIS, WHICH TOOK A NUMBER OF YEARS, THIS ENDS
4 IN 1961 SOME TIME, IT STARTED IN 1957, BY WHICH
5 TIME MR. RILEY HAD DIED OF LUNG CANCER. EVERY
6 TIME ANOTHER RULING WAS MADE OR ANOTHER HEARING
7 WAS RESCHEDULED OR SOMETHING, THE SERVICE OF THE
8 PAPER WOULD BE MADE ON THE COMPANIES INVOLVED AT
9 THEIR VARIOUS CORPORATE HEADQUARTERS, AND --

10 Q AND WHO WERE THE COMPANIES INVOLVED?

11 A -- THIS IS SO INDICATED IN THE CLAIM FILE.
12 COMPANIES INCLUDED OWENS-CORNING AND ITS
13 CONTRACTING DIVISION, FIBREGLASS ENGINEERING AND
14 SUPPLY COMPANY, AS WELL AS ARMSTRONG CORK,
15 FIBREBOARD, AND PHILIP CAREY COMPANIES, AND THE
16 OWENS-CORNING PACIFIC COAST DIVISION, SANTA
17 CLARA, CALIFORNIA IS LISTED AS THE RECIPIENT OF
18 THE NOTICE I HAPPENED TO HAVE OPENED UP TO HERE,
19 WHICH IS CALLED "ORIGINAL LIABILITY AND NEWLY
20 APPOINTED PARTIES DEFENDANT AND PENALTY FOR
21 WILLFUL FAILURE TO PAY COMPENSATION."

22 Q WELL, DOCTOR, TO SHORTEN IT, DID THAT --
23 DOES THAT CLAIM ON MR. RILEY INVOLVE THE CLAIM OF
24 A PERSON WHO HAS BEEN EXPOSED TO ASBESTOS AND HAS
25 AN ASBESTOS-RELATED DISEASE?

1 A YES. FROM USING INSULATION MATERIALS AS A
2 CAREER INSULATOR.

3 Q HE WAS AN INSULATOR?

4 A YES.

5 Q WAS THAT CLAIM FILED AGAINST THOSE VARIOUS
6 COMPANIES WHO DEFENDED IT IN 1957?

7 A YES. AND THROUGH THE YEARS, THROUGH '61.

8 Q AND THROUGH THAT CLAIM, WAS THERE AMPLE
9 LANGUAGE AND INFORMATION AVAILABLE TO THOSE
10 COMPANIES WHO RECEIVED THOSE DOCUMENTS THAT YOU
11 SPEAK OF TO NOTIFY THEM THAT ASBESTOS WAS A
12 DANGEROUS PRODUCT?

13 A WELL, CERTAINLY THAT THIS INDIVIDUAL WAS
14 CLAIMING. I MEAN, THIS INCLUDES MEDICAL REPORTS
15 AS WELL, AND SO THERE WAS ALL KINDS OF
16 INFORMATION INVOLVED IN THIS CLAIM FILE.

17 Q NOW, THERE WERE OTHER WORKMANS' COMPENSATION
18 CLAIMS DURING THAT PERIOD AGAINST OWENS-CORNING
19 FIBREGLASS?

20 A YES. THERE WERE -- NOW, I AM REFERRING TO
21 TABLE THREE IN CHAPTER THREE OF MY BOOK.

22 Q WHICH HAS NOT BEEN MARKED AS AN EXHIBIT, BUT
23 IF YOU WANT TO USE IT AS A MEMORANDUM TO REFRESH
24 YOUR MEMORY, GO AHEAD.

25 A AND IN THIS TABLE I HAVE -- THIS IS

1 BASICALLY A LIST OF COMPENSATION CLAIMS AGAINST
2 ARMSTRONG CORK WHICH ARMSTRONG CORK PRODUCED AND
3 WHEN A NUMBER OF THESE CLAIM FILES WERE EXAMINED
4 IN THE BUREAUS OF THE WORKMANS' COMPENSATION
5 FILES IN THE VARIOUS STATES, WE FOUND THAT A
6 NUMBER OF OTHER COMPANIES WERE ALSO DEFENDANTS IN
7 THE SAME ACTIONS INCLUDING OWENS-CORNING. AND SO
8 OWENS-CORNING IS LISTED HERE AS A DEFENDANT IN
9 THE CLAIM OF IRVING MCCARROL IN LOS ANGELES IN
10 1959. THE CLAIM WAS FILED IN '56, AND
11 OWENS-CORNING WAS JOINED IN 1959.

12 Q EXCUSE ME. COULD YOU TELL ME WHAT PAGE
13 YOU'RE ON IN YOUR BOOK, DOCTOR?

14 A I THINK THIS IS 148. I DON'T HAVE ANY
15 NUMBERS ON THIS THE WAY IT WAS PHOTOCOPIED. THE
16 PAGE NUMBERS WERE CHOPPED OFF, BUT IT'S TABLE
17 THREE IN CHAPTER THREE.

18 Q GO AHEAD, SIR.

19 A OWENS-CORNING, AS MENTIONED, WAS INVOLVED IN
20 THE RILEY CASE, OWENS-CORNING WAS INVOLVED IN THE
21 STRICKLAND CASE. IN CALIFORNIA A CLAIM WAS FILED
22 IN 1957. THE TREATING PHYSICIAN WAS DR. HINSHAW.

23 Q ALL RIGHT, SIR. HOW MANY -- WITHOUT GOING
24 THROUGH ALL OF THOSE, HOW MANY OF THESE CLAIMS
25 WERE THERE DURING THAT PERIOD?

1 A IT LOOKS LIKE THERE WERE ABOUT NINE OR TEN
2 BETWEEN 1957 AND 1963 IN THE FILE.

3 Q OKAY. AND DID THEY ALL RELATE TO PEOPLE WHO
4 WERE ASBESTOS WORKERS AND WHO WERE CLAIMING THAT
5 THEY CONTRACTED DISEASE AS A RESULT OF WORKING
6 FROM ASBESTOS?

7 A YES. THESE WERE ALL INSULATION WORKERS WHO
8 HAD WORKED FOR THE CONTRACTING DIVISIONS OF THE
9 MANUFACTURER DEFENDANTS IN THE COURT TODAY, OR
10 SOME OF THEM.

11 Q NOW, I BELIEVE THAT COMPLETES THE
12 OWENS-CORNING DOCUMENTARY EVIDENCE. NOW I HAVE
13 AGAIN PREPARED A CHART WHICH I DON'T, DOES NOT
14 PROPORT TO BE EVIDENCE, BUT IT IS -- I'M USING IT
15 AS A TRIAL GUIDE IN ORDER TO SUMMARIZE YOUR
16 TESTIMONY IN KIND OF A NUTSHELL BECAUSE I KNOW
17 WE'VE BEEN THROUGH A LOT OF DOCUMENTS, AND IF YOU
18 WILL HELP ME WITH THIS, DOCTOR, I WANT TO GO
19 THROUGH IT QUICKLY AND THEN ASK YOU A QUESTION
20 ABOUT IT. THIS RELATES TO OWENS-CORNING
21 FIBREGLASS, AND WE START OUT IN 1941 AND 1942
22 WHERE WE HAD THE WAR, YOU MIGHT SAY, BETWEEN
23 FIBREGLASS AND ASBESTOS AND THEY WERE HOLDING
24 BACK THE LITERATURE AND THE THREAT OF EXPOSING
25 ASBESTOS AS A DANGEROUS SUBSTANCE OF THE WEAPON

1 IN RESERVE.

2
3 THE COURT: MR. BALDWIN, WHY DON'T WE LET
4 THE DOCTOR SUMMARIZE HIS TESTIMONY?

5
6 MR. BALDWIN: ALL RIGHT. THAT WOULD BE
7 BETTER.

8
9 BY MR. BALDWIN:

10 Q IF YOU WOULD COME DOWN HERE AND LOOK AT
11 THIS, DOCTOR.

12
13 MR. CROSBY: YOUR HONOR, IF THE WITNESS IS
14 GOING TO BE PERMITTED TO SUMMARIZE HIS TESTIMONY,
15 I WOULD PREFER THAT HE DO IT FROM WHAT HE'S
16 REVIEWED AND NOT MR. BALDWIN'S CHART, WHICH MR.
17 BALDWIN SAYS HE PREPARED WHICH HE SAYS IS NOT
18 EVIDENCE.

19
20
21
22
23
24
25

1 MR. CROSBY: IF THE WITNESS IS GOING TO BE
2 PERMITTED TO SUMMARIZE HIS TESTIMONY, I WOULD
3 PREFER HE DO IT WITH WHAT HE HAS REVIEWED AND NOT
4 MR. BALDWIN'S CHART, WHICH MR. BALDWIN SAYS HE
5 PREPARED, WHICH HE SAYS IS NOT EVIDENCE.

6

7 THE COURT: WELL, COUNSEL, I'M GOING TO
8 PERMIT THE WITNESS TO SUMMARIZE HIS TESTIMONY.
9 IT MAY OR MAY NOT BE IN ACCORDANCE WITH YOUR
10 PREFERENCES, OTHER COUNSEL'S PREFERENCES. I SEE
11 NO LEGAL OBJECTION TO THE PROCEDURE. GO AHEAD.

12

13 BY MR. BALDWIN:

14 Q DR. CASTLEMAN, IF YOU COULD JUST VERY

15 QUICKLY RUN DOWN THIS SUMMARY OF THE DATA ON THIS
16 CHART FOR THE JURY, PLEASE, WITHOUT EXPOUNDING,
17 JUST TO REFRESH, FLASHBACK TO THE EVIDENCE THAT
18 WE HAVE COVERED ON EACH POINT.

19

20 A ALL RIGHT. IN 1941 AND '42 THERE WAS THE
21 CONCERN ABOUT FIBERGLASS COMPETING WITH ASBESTOS
22 INSULATION PRODUCTS WHICH WERE ALREADY ON THE
23 MARKET. OWENS-CORNING FIBERGLASS PRODUCTS WERE
24 BREAKING INTO THIS MARKET, THE COMPANY HAD BEEN
25 FORMED IN 1938. IN 1941 AND '42 THEY WERE
 COMPIILING WHAT THEY CALLED AN ASBESTOSIS WEAPON

1 IN RESERVE CONSISTING OF FIVE OR SIX HUNDRED
2 PAGES OF DOCUMENTS ON ASBESTOSIS, WHICH THEY WERE
3 THINKING OF PROVIDING TO THE ASBESTOS WORKERS
4 UNION IN THE EVENT THAT THAT PROVED NECESSARY IN
5 ORDER TO CARRY OUT THEIR BUSINESS MARKETING
6 STRATEGY.

7 IN 1943 AN INTERNAL MEMORANDUM OF THE
8 COMPANY TALKS ABOUT THE FEAR OF SMEARING
9 FIBERGLASS WITH THE DANGERS OF ASBESTOS IN THE
10 EVENT THAT THEY WERE TO START USING MIXTURES OF
11 ASBESTOS WITH FIBERGLASS IN PRODUCTS WHICH WERE
12 PREVIOUSLY ONLY FIBERGLASS PRODUCTS, OR
13 DEVELOPING NEW PRODUCTS WHICH WOULD COMBINE
14 ASBESTOS WITH FIBERGLASS, THAT THIS PRESENTED
15 POTENTIAL HAZARDS FROM THE STANDPOINT OF SMEARING
16 THEM WITH -- AS SELLING A HEALTH HAZARD MATERIAL.

17 IN 1957 THROUGH 1963 THERE WERE WORKER'S
18 COMPENSATION CLAIMS BROUGHT AGAINST THE COMPANY,
19 SOME OF WHICH INVOLVED LUNG CANCER, SOME OF WHICH
20 INVOLVED ONLY ASBESTOSIS, A NUMBER OF WHICH
21 INVOLVED PAYMENTS BY OWENS-CORNING, AND THESE
22 CLAIMS WERE FILED STARTING IN 1957, AND THROUGH
23 1963, IN VARIOUS PARTS OF THE UNITED STATES BY
24 THE CONTRACTING DIVISION EMPLOYEES, FORMER
25 EMPLOYEES OF THE COMPANY, AND THEIR SURVIVORS.

1 Q MAY I INTERRUPT THERE, DR. CASTLEMAN, TO ASK
2 YOU THIS QUESTION, WHEN YOU WERE TESTIFYING ABOUT
3 THOSE WORKER'S COMPENSATION CASES I DID NOT HEAR
4 YOU SAY THAT THERE WERE CASES INVOLVING CANCER.
5 WERE THERE IN FACT CASES INVOLVING CANCER IN THE
6 NINE OR TEN WORKER'S COMPENSATION CASES THAT YOU
7 REFERRED TO EARLIER?

8 A YES. MR. RILEY, WHOSE CLAIM I SHOWED YOU,
9 DIED OF LUNG CANCER.

10 Q GO AHEAD, SIR. NUMBER FOUR, I BELIEVE.

11 A IN 1957, INTERNAL MEMORANDUM OF THE COMPANY,
12 JUST EXPRESSES AGAIN THAT PEOPLE IN THE COMPANY
13 AT LEAST WERE AWARE OF THE APPREHENSIONS OF THE
14 INSULATION WORKERS ABOUT A FEARED LUNG DISEASE
15 HAZARD, WHICH THE INTERNAL MEMORANDUM DESCRIBES
16 AS ASBESTOSIS.

17 IN 1958 THE KAYLO BUSINESS WAS ENTIRELY
18 PURCHASED BY OWENS-CORNING FROM OWENS-ILLINOIS,
19 AND AT THAT TIME THE DOCUMENTATION FROM THE
20 SARANAC LABORATORY TESTING BY DR. VORWALD WAS
21 ALSO TRANSFERRED TO THE NEW OWNER OF THE KAYLO
22 BUSINESS.

23 IN 1963 AN INTERNAL DOCUMENT SPEAKS ABOUT
24 ASBESTOS IN KAYLO AS A CAUSE OF CANCER.

25 IN 1964 THE SELIKOFF STUDY IN THE JOURNAL OF

1 THE AMERICAN MEDICAL ASSOCIATION IS NOTED, AND
2 THERE'S SOME DISPUTE OVER WHETHER THE FINDINGS
3 NECESSARILY WOULD APPLY TO KAYLO, SINCE SELIKOFF
4 HAD STRESSED THAT GENERALLY THESE INSULATION
5 WORKERS DEVELOPED CANCER TWENTY YEARS OR MORE
6 FROM ONSET OF THEIR EXPOSURE, AND SINCE KAYLO
7 HADN'T BEEN ON THE MARKET BY THEN FOR TWENTY
8 YEARS, THE CLEVER WRITER OF THE MEMORANDUM SAID
9 THAT PROBABLY KAYLO CAN'T BE BLAMED FOR CAUSING
10 THE DISEASE BECAUSE OF THE TWENTY YEAR RULE.

11 IN ANY EVENT, THERE WAS DEFINITELY AN
12 AWARENESS OF THIS EPIDEMIOLOGICAL STUDY SHOWING
13 THE HIGH RATE OF LUNG CANCER AMONGST INSULATION
14 WORKERS PUBLISHED BY IRVING SELIKOFF.

15 ALSO IN 1964 BEGINS A SERIES OF DISCUSSIONS
16 INTERNALLY IN THE COMPANY, AND INTERNALLY IN THE
17 INSULATION MANUFACTURING INDUSTRY THROUGH THE
18 TRADE ASSOCIATION, AT LEAST ACKNOWLEDGING THAT
19 JOHNS-MANVILLE CORPORATION, FOLLOWING THE
20 PUBLICATION OF SELIKOFF'S REPORT, WAS STARTING TO
21 PUT WARNING LABELS ON CARTONS OF INSULATION
22 PRODUCTS.

23 AND THIS JUST CONTINUES YEAR AFTER YEAR,
24 THESE INTERNAL MEMORANDA, INDICATING NO EVIDENCE
25 THAT THERE WAS ANY KIND OF A WARNING YET BEING

1 USED, TALKING ABOUT VARIOUS THINGS THAT WERE
2 COMING OUT, THAT THERE WERE MORE AND MORE
3 INQUIRIES COMING INTO THE COMPANY BECAUSE OF
4 SELIKOFF'S -- THE PUBLICITY ABOUT SELIKOFF'S WORK
5 OVER THE YEARS, THAT SELIKOFF SAID THAT ONE FIBER
6 MIGHT BE SUFFICIENT TO CAUSE CANCER, THAT THE
7 GOVERNMENT WAS GOING TO BLOW THE WHISTLE SOME DAY
8 SOON ON ASBESTOS, WHICH IN FACT HAPPENED WITH THE
9 ENACTMENT OF THE OCCUPATIONAL SAFETY AND HEALTH
10 ACT A COUPLE OF YEARS AFTER THIS MEMORANDUM IN
11 1967. I THINK -- AND TALK ABOUT "D" DAY FOR
12 SUBSTITUTING ASBESTOS WHEN THE PRESSURE REACHED A
13 DANGER POINT, VARIOUS TYPES OF LANGUAGE LIKE
14 THAT, INTERSPERSED WITH CONCERNs ABOUT PUBLICITY
15 AND LIABILITY.

16 AND IN 1970 STILL DISCUSSIONS ABOUT WHETHER
17 WARNING LABELS WILL HAVE TO BE USED, OR WHETHER
18 SOME DELAY CAN STILL BE HAD IN THE USE OF THESE
19 WARNING LABELS.

20 Q NOW, DOCTOR, A COUPLE OF GENERAL QUESTIONS.
21 DO YOU HAVE AN OPINION BASED ON ALL THAT EVIDENCE
22 THAT YOU 'VE SUMMARIZED AS TO WHETHER OR NOT
23 PITTSBURG-CORNING -- OWENS-CORNING ACTED IN
24 CONSORT WITH OTHER COMPANIES OF THE INDUSTRY,
25 MEMBERS OF THE INDUSTRY, TO ACHIEVE COMMON

1 PURPOSES ?

2

3 MR. COOK: YOUR HONOR, FOR CLARIFICATION, I
4 WOULD LIKE TO BE CLEAR THAT HE'S ANSWERED THIS
5 QUESTION AS TO OWENS-CORNING AT THIS POINT IN
6 TIME.

7

8 MR. BALDWIN: THE QUESTION WAS DIRECTED TO
9 OWENS-CORNING, BUT REFERRED TO OTHER MEMBERS OF
10 THE INDUSTRY.

11

12 THE WITNESS: YES, IN WHAT MIGHT BEST BE
13 DESCRIBED AS A CONSPIRACY OF SILENCE.

14

15 BY MR. BALDWIN:

16 Q

17 AND THAT IS MY NEXT QUESTION, DOCTOR,
18 WITHOUT DETAILING THIS INFORMATION AGAIN, WHICH
19 YOU'VE SUMMARIZED, DO YOU HAVE AN OPINION AS TO
20 WHETHER OR NOT THE ACTIONS OF OWENS-CORNING, AS
21 WE'VE SEEN TODAY, AND AS YOU'VE TESTIFIED ABOUT,
22 AMOUNT TO A CONSPIRACY OF SILENCE, WHERE THEY
23 HAVE COVERED UP KNOWLEDGE ABOUT ASBESTOS, COVERED
24 UP THE DANGERS OF ASBESTOS, ATTEMPTED TO FIX,
25 DISTORT, AND SHAPE THE LITERATURE, AND THREE, HAD
THE EFFECT OF PROTECTING INDUSTRY AGAINST PEOPLE

1 WHO WOULD FILE CLAIMS, DOCTORS AND LAWYERS?

2 A YES.

3 Q IS THAT YOUR OPINION?

4 A YES, I HAVE AN OPINION.

5 Q AND WHAT IS YOUR OPINION?

6 A MY OPINION IS THEY SHOULDN'T HAVE GOTTEN
7 INTO THE ASBESTOS BUSINESS KNOWING WHAT THEY
8 KNEW, AND ONCE THEY DID, THEY CONDUCTED
9 THEMSELVES AS YOU HAVE JUST DESCRIBED.

10 Q THANK YOU, SIR. NOW LET'S TAKE CARE OF ONE
11 BIT OF HOUSEKEEPING.

12

13 THE COURT: DO YOU WANT THE DOCTOR BACK ON
14 THE STAND?

15

16 MR. BALDWIN: WELL, NO, I WANTED TO ASK HIM
17 ABOUT THIS DOCUMENT.

18

19 BY MR. BALDWIN:

20 Q DOCTOR, I'LL PREFACE THIS BY GOING BACK TO
21 YOUR GENERAL DISCUSSION OF THE GENERAL ACTIONS OF
22 THE INDUSTRY. I FAILED TO ASK YOU ABOUT THE
23 LEWINSOHN REPORT. WOULD YOU TELL US WHO -- THIS
24 IS EXHIBIT 393-MM -- WHO HILTON C. LEWINSOHN IS?

25 A DR. LEWINSOHN WAS THE, AT THE TIME OF THIS

1 PRESENTATION, WAS THE CORPORATE MEDICAL DIRECTOR
2 FOR THE RAYBESTOS-MANHATTAN COMPANY, THIS WAS IN
3 1977. PREVIOUS TO THAT HE HAD BEEN THE CORPORATE
4 MEDICAL DIRECTOR WITH A LARGE ASBESTOS COMPANY IN
5 THE UNITED KINGDOM CALLED TURNER AND NEWELL,
6 WHICH WHOM WE'VE ALSO DISCUSSED.

7 AND SUBSEQUENT TO THAT HE WENT TO ANOTHER
8 COMPANY, WHICH WAS INVOLVED IN THE ABESTOS FIELD,
9 UNION CARBIDE, WHERE HE NOW WORKS TODAY.

10 Q NEXT PAGE, PLEASE. WELL, FIRST OF ALL, THIS
11 IS ADDRESSED TO MEMBERS OF THE FRICTION MATERIALS
12 STANDARD INSTITUTE ANNUAL MEETING ON JUNE 22,
13 1977. IS THAT ANOTHER EXAMPLE, DOCTOR, OF
14 DISSEMINATION AND EXCHANGE OF IDEAS AND
15 INFORMATION BETWEEN MEMBERS OF THE ASBESTOS
16 INDUSTRY, AND OTHER PEOPLE AND OTHER INDUSTRIES
17 AS WELL AS THE ASBESTOS INDUSTRY?

18 A YES. THIS IS PRETTY MUCH PURELY AN ASBESTOS
19 INDUSTRY TRADE ASSOCIATION. FRICTION MATERIALS
20 REFERS TO BRAKE LININGS, CLUTCH FACINGS,
21 AUTOMOTIVE TRANSMISSION PARTS, THINGS OF THAT
22 SORT.

23 Q SO, IF HE MADE AN ADDRESS TO MEMBERS OF THAT
24 ORGANIZATION HE WOULD BE ADDRESSING MEMBERS OF
25 THE INDUSTRY?

1 A YES. ALL THOSE PRODUCTS WERE MADE WITH
2 ASBESTOS, AT LEAST TO THE BEST OF MY KNOWLEDGE,
3 IN 1977, ALMOST EXCLUSIVELY THEY WERE MADE WITH
4 ASBESTOS.

5 Q I SHOW YOU ONE PORTION OF THAT ADDRESS,
6 DOCTOR. WOULD YOU READ THE PART THAT HAS BEEN
7 HIGHLIGHTED, PLEASE, SIR?

8 A UNDER THE HEADING "ASBESTOS, CANCER", HE
9 SAYS, "ACCORDING TO GILSON, IT WAS ABOUT FIFTY
10 YEARS AGO AFTER COMMERCIAL EXPLOITATION OF
11 ASBESTOS BEGAN THAT LUNG CANCER WAS FIRST THOUGHT
12 TO BE CAUSED BY THE DUST," IN PARENTHESIS HE SAYS
13 1935, "AND ANOTHER TEN YEARS BEFORE THIS WAS
14 GENERALLY THOUGHT PROBABLE," IN PARENTHESIS HE
15 SAYS 1945, "AND A FURTHER TEN BEFORE IT WAS
16 FINALLY ESTABLISHED IN THE ASBESTOS TEXTILE
17 INDUSTRY," AND IN PARENTHESIS HE HAS "DOLL,
18 1955." HE SAYS, "LUNG CANCER COMPLICATES FIFTY TO
19 SIXTY PERCENT OF ASBESTOSIS CASES RESULTING FROM
20 EXPOSURE TO CONDITIONS MORE THAN THIRTY TO FORTY
21 YEARS PREVIOUSLY."

22
23
24
25

1 Q SO, HERE WE HAVE AN ADDRESS IN '67 BY MR.
2 LEWINSOHN ACKNOWLEDGING THE CONNECTION BETWEEN
3 LUNG CANCER AND ASBESTOSIS, I MEAN, AN ASBESTOS
4 EXPOSURE SAYING IT GOES BACK TO 1935 AS BEING
5 SUSPECTED, '45 AS BEING PROBABLE, AND '55 AS
6 BEING ESTABLISHED, IS THAT CORRECT?

7 A YES. AND THIS IS SIMILAR TO THINGS THAT
8 LEWINSOHN HAS SAID IN PUBLISHED WRITINGS.

9 Q I BELIEVE THAT'S ALL. NEXT, DOCTOR, I THINK
10 WE CAN JUST PROCEED FASTER, IF YOU DON'T MIND, I
11 THINK MAYBE YOU COULD TURN THIS AROUND HERE AND
12 THEN YOU CAN TALK INTO THE "MIC" STRAIGHT. THE
13 PHILIP CAREY, WE WANT TO TALK ABOUT, 399J. AND
14 ALONG ABOUT THE SAME TIME OF THE SUMNER SIMPSON
15 PAPERS WHERE THEY WERE TALKING ABOUT THE LESS
16 SAID ABOUT ASBESTOS THE BETTER, THE ASBESTOS
17 MAGAZINE WAS PUBLISHED IN MARCH OF 1930. IS THAT
18 THE SAME MAGAZINE THAT MRS. ROSSITER WHO WROTE
19 SUMNER SIMPSON ABOUT WAS THE EDITOR OF?

20 A YES. SHE WAS THE EDITOR OF ASBESTOS
21 MAGAZINE.

22 Q ALL RIGHT.

23 A HERE, IT'S MARCH 1930.

24 Q COULD YOU FIND FOR ME, DOCTOR, THE REFERENCE
25 TO PHILIP CAREY? THE PAGE OF THE SAME EXHIBIT,

1 DOCTOR, WOULD YOU TELL US THE SIGNIFICANCE OF
2 THIS PAGE FIVE?

3 A THIS IS AN ADVERTISEMENT FOR THE PHILIP
4 CAREY COMPANY NOTING THAT THEY ARE, IN MARCH
5 1930, NOTING THAT THEY SELL ASBESTOS FIBER WHICH
6 THEY MINE IN CANADA AND A WHOLE RANGE OF ASBESTOS
7 PRODUCTS INCLUDING INSULATION PRODUCTS LIKE
8 EIGHTY-FIVE PERCENT MAGNESIA. THEY ALSO NOTE
9 THEY'VE BEEN IN THIS BUSINESS FOR OVER FIFTY
10 YEARS, CAREY ASBESTOS, MAGNESIA, AND ASPHALT
11 PRODUCT HAVE BEEN SUPPLIED TO MANUFACTURERS ALL
12 OVER THE WORLD THEY SAY.

13 Q SO, IN 1930, THEY'VE BEEN IN THE BUSINESS
14 OVER FIFTY YEARS?

15 A YES.

16 Q ALL RIGHT, SIR. DID THAT ISSUE OF ASBESTOS
17 MAGAZINE ALSO CONTAIN AN ARTICLE IN IT ABOUT
18 ASBESTOS DISEASE, ASBESTOSIS?

19 A YES, IT DID.

20 Q WE'LL FIND IT AND COME BACK TO IT BECAUSE
21 WE'RE GOING TO HAVE SOME OTHER PEOPLE -- NEXT
22 EXHIBIT, PLEASE. BUT ANYWAY BEFORE WE GO TO THE
23 NEXT EXHIBIT, IS IT YOUR TESTIMONY THAT THE ISSUE
24 OF ASBESTOS MAGAZINE WHICH WENT TO THE TRADE
25 ASBESTOS INDUSTRY THAT PHILIP CAREY HAS THIS PAGE

1 ADVERTISEMENT IN THAT YOU JUST TESTIFIED ABOUT,
2 THAT VERY SAME ISSUE ALSO CARRIED AN ARTICLE
3 ABOUT THE DANGER OF ASBESTOS AND ASBESTOSIS?

4 A YES, THERE IS AN ARTICLE ON PAGE TWENTY
5 CALLED "PULMONARY ASBESTOSIS."

6 Q ALL RIGHT. GO AHEAD. THIS IS BACK IN 1930
7 THEN THAT PHILIP CAREY, IF THEY HAD READ THE
8 MAGAZINE, THAT IT ADVERTISED IN WOULD HAVE KNOWN
9 ABOUT THE DANGERS OF ASBESTOS?

10 A YES, SIR.

11 Q AND ABOUT THE DISEASE ASBESTOSIS, IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q ALL RIGHT, SIR. NOW, PLAINTIFFS' EXHIBIT
15 399K. WOULD YOU TELL US WHAT THAT IS?

16 A THIS IS A TRADE MAGAZINE CALLED "HEATING AND
17 VENTILATING." IT'S --

18 Q WHAT DOES THIS MAGAZINE GO TO?

19 A THE VERY NEXT PAGE DESCRIBES THE AUDIENCE,
20 BUT THESE ARE ESSENTIALLY COMPANIES OR FIRMS THAT
21 WOULD USE ASBESTOS INSULATION PRODUCTS AND OTHER
22 THINGS. IT'S DESCRIBED AS A MONTHLY MAGAZINE FOR
23 ENGINEERS, CONTRACTOR, AND CONTRACTORS CONCERNED
24 WITH INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL
25 AIR CONDITIONING, REFRIGERATION, PIPING, HEATING,

1 AND VENTILATION. AND IT HAS THIS ARTICLE IN THE
2 JUNE 1944 ISSUE CALLED "DUST AS AN INDUSTRIAL
3 HEALTH HAZARD" BY HUTCHINSON.

4 Q AND WHAT IS THE CONNECTION WITH PHILIP
5 CAREY?

6 A PHILIP CAREY ALSO ADVERTISED AN ASBESTOS
7 PRODUCT IN THIS MAGAZINE.

8 Q IS THIS THE ADVERTISEMENT THAT YOU'RE
9 SPEAKING OF IN THAT MAGAZINE?

10 A YES, THIS IS THE ADVERTISEMENT FOR AN
11 ALL-ASBESTOS PRODUCT FROM PHILIP CAREY COMPANY,
12 AND THEY SHOW PICTURES OF A HOSPITAL AND A KROGER
13 GROCERY STORE AND OTHER PLACES WHERE THEY HAD
14 INSTALLED THIS.

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. BALDWIN:

2 Q DOCTOR, IS PHILIP CAREY THE SAME THING
3 AS CELOTEX AS WE KNOW IT TODAY?

4 A YES.

5 Q IS THIS EXHIBIT NOW THAT YOU'RE SEEING FROM
6 THE SAME ARTICLE, ENTITLED "DUST AS AN INDUSTRIAL
7 HAZARD", HUTCHINSON, IS THAT THE ARTICLE THAT YOU
8 REFERRED TO ABOUT ASBESTOSIS?

9 A RIGHT. THIS IS THE FIRST PAGE OF THAT
10 ARTICLE.

11 Q NEXT PAGE. AND WHEN DID THAT APPEAR IN THAT
12 MAGAZINE, THAT CELOTEX, PHILIP CAREY, RATHER,
13 ADVERTISED IN?

14 A THIS IS JUNE, 1944.

15 Q AND COULD YOU READ THE PERTINENT PART OF THE
16 ARTICLE AS IT RELATES TO ASBESTOSIS, DOCTOR, AS
17 SHOWN ON THIS EXHIBIT, WHICH IS A PAGE OF THE
18 SAME ARTICLE?

19 A UNDER THE HEADING "ASBESTOSIS", THE ARTICLE
20 SAYS, "THE LUNG CONDITION RESULTING FROM THE
21 INHALATION OF THIS DUST IS KNOWN AS ASBESTOSIS,
22 AND RESEMBLES SILICOSIS IN ITS MAIN CLINICAL
23 ASPECTS, BUT DIFFERS DUE TO THE ENHANCED RATE OF
24 DEVELOPMENT."

25 Q NEXT. AGAIN READING FROM THE SAME ARTICLE.

1 A HE SAYS, "IT IS ESTIMATED THAT THERE ARE IN
2 THE UNITED STATES APPROXIMATELY TEN THOUSAND MEN
3 EXPOSED TO THE HAZARD AS A RESULT OF WORK IN THE
4 INSULATING ASBESTOS CLOTH AND SIMILAR
5 INDUSTRIES." FURTHER DOWN HE SAYS, "LIKE
6 SILICOSIS, IT IS INCURABLE AND PROGRESSIVE. A
7 CASE IS REPORTED OF A PATIENT WHO WAS EXPOSED TO
8 ASBESTOS DUST IN ONE YEAR, AND WHOSE SPUTUM
9 SHOWED THE PRESENCE OF ASBESTOSIS BODIES FOURTEEN
10 YEARS LATER. VERY FEW DATA ARE AVAILABLE ON THE
11 RELATION OF DUST CONCENTRATION TO THE INCIDENCE
12 OF DISEASE. NO MINIMAL SAFE CONCENTRATIONS HAVE
13 YET BEEN SET UP, AND INFORMATION IS SCANT AS TO
14 THE CONDITIONS IN THOSE PLANTS WHERE HAZARD IS
15 KNOWN TO EXIST."

16 Q SO, IN 1944 THEY'RE TALKING ABOUT ASBESTOSIS
17 AS IT RELATES TO INSULATION WORKERS, ARE THEY
18 NOT?

19 A YES.

20 Q AND THEY'RE DESCRIBING IT AS AN INCURABLE
21 AND PROGRESSIVE DISEASE, MUCH AS YOU'VE DESCRIBED
22 IT --

23 A YES.

24 Q -- TODAY, IS THAT CORRECT?

25 A YES, SIR.

1 Q AND THAT'S TO A MAGAZINE THAT GOES OUT TO
2 THE ASBESTOS INDUSTRY?

3 A YES. OWENS-CORNING WAS ANOTHER ADVERTISER
4 IN THIS ISSUE OF THIS MAGAZINE.

5 Q WE'LL COME TO OWENS-CORNING. NEXT. AND
6 WHAT DOES THIS DOCUMENT SHOW? IT'S PART OF THE
7 SAME EXHIBIT, IS THAT CORRECT, DOCTOR?

8 A YES. THIS IS FROM THE SAME MAGAZINE. THIS
9 IS CALLED "ALPHABETICAL INDEX OF ADVERTISERS",
10 AND IT LISTS A WHOLE BUNCH OF COMPANIES THAT
11 ADVERTISED IN THIS MAGAZINE.

12 Q DOES IT SHOW PHILIP CAREY?

13 A IT SHOWS PHILIP CAREY.

14 Q OWENS-CORNING?

15 A AND OWENS-CORNING FIBREGLAS CORPORATION.

16

17 MR. BALDWIN: YOUR HONOR, THE NEXT DOCUMENT
18 IS THE MATTER THAT YOU ASKED ME TO ADDRESS THE
19 COURT BEFORE WE WENT INTO.

20

21 THE COURT: COULD WE HAVE THE LIGHTS, MR.
22 NORMAN?

23

24 MR. BALDWIN: I THINK I COULD DO IT IN JUST
25 A MATTER OF -- LAY THE QUALIFICATIONS WITHOUT

1 SHOWING THE DOCUMENT, IF YOU JUST WANTED TO
2 CHARGE THE JURY, AND THE COURT COULD RULE IN A
3 MATTER OF THIRTY SECONDS.

4 I THINK I COULD DEVELOP IT IN A COUPLE OF
5 QUESTIONS.

6

7 THE COURT: GO AHEAD.

8

9 BY MR. BALDWIN:

10 Q I JUST WANT TO REFER TO THE SCOBIE MATTER,
11 DOCTOR. HAVE YOU DEVELOPED CERTAIN DOCUMENTS IN
12 CONNECTION WITH HUBERT SCOBIE?

13 A I HAVE LOCATED CERTAIN DOCUMENTS IN
14 CONNECTION WITH MR. SCOBIE, YES.

15 Q AND WHERE DID YOU FIND THEM, DOCTOR?

16 A THE DOCUMENTATION WAS AT THE ARMED FORCES
17 INSTITUTE OF PATHOLOGY AT THE WALTER REED
18 HOSPITAL IN WASHINGTON, D.C. THESE WERE FROM THE
19 ARCHIVES OF DR. ARTHUR VORWALD, WHICH HIS WIFE
20 HAD DONATED TO THE ARMED FORCES INSTITUTE OF
21 PATHOLOGY.

22 Q AND YOU'VE ACTUALLY MADE A VISIT TO THERE
23 AND FOUND THESE DOCUMENTS IN THAT PLACE THAT YOU
24 JUST DESCRIBED?

25 A YES. AND THESE WERE THE PRIVATE PATIENT

1 FILES. CASES IN WHICH THE SARANAC LABORATORY HAD
2 EXAMINED EITHER TISSUES OR CHEST X-RAYS, OR HAD
3 OTHER KINDS OF RECORDS, AND HAD COME TO SOME
4 CONCLUSIONS ABOUT WHETHER CERTAIN INDIVIDUALS HAD
5 DEVELOPED OR DIED FROM OCCUPATIONAL DISEASES.

6 Q AND IS THIS DOCUMENT, PLAINTIFFS' EXHIBIT
7 399-L, WAS IT FOUND IN THAT FILE?

8 A YES. IT WAS ONE OF THOSE FILES.

9 Q WAS IT A PART OF THAT FILE?

10 A YES.

11 Q AND IS IT DATED NOVEMBER 20, 1944?

12 A YES.

13
14 MR. BALDWIN: YOUR HONOR, I THINK THE
15 PREDICATE HAS BEEN LAID FOR THE ADMISSIBILITY OF
16 THE DOCUMENTS UNDER 901 AND 803, RULE OF ANCIENT
17 DOCUMENTS.

18
19 MS. JENKINS: YOUR HONOR, MY OBJECTION TO
20 THIS PARTICULAR DOCUMENT IS THAT IT'S NOT SHOWN
21 THAT IT WAS EVER INDICATED, OR ANY INFORMATION
22 ABOUT THIS, WAS EVER GIVEN TO PHILIP CAREY.

23
24 THE COURT: I NEVER HAVE LOOKED AT THE
25 EXHIBIT ITSELF. LET ME SEE THE EXHIBIT ITSELF.

1

2 MS. JENKINS: YOUR HONOR, IN ADDITION, WE
3 WOULD LIKE TO REURGE OUR PREVIOUS OBJECTIONS,
4 THAT THIS DOCUMENT IS UNSIGNED, WE DON'T KNOW WHO
5 WROTE IT --

6

7 THE COURT: WELL, I UNDERSTAND YOUR 901
8 OBJECTION.

9

10 MS. JENKINS: YOUR HONOR, IT'S NOT ADDRESSED
11 TO ANYBODY, AND IT'S CERTAINLY NOT ADDRESSED TO
12 PHILIP CAREY.

13

14 THE COURT: ABSENT FURTHER EVIDENCE, I
15 SUSTAIN THE OBJECTION.

16

17 MS. JENKINS: THANK YOU, YOUR HONOR.

18

19 THE COURT: SHOWING SOME CONNECTION TO
20 PHILIP CAREY. THE PART OF THE OBJECTION RELATING
21 TO AUTHENTICITY I OVERRULE, BECAUSE IT DOES
22 APPEAR TO BE WHAT IT PURPORTS TO BE, ENOUGH TO
23 SATISFY THE COURT.

24

25 MR. BALDWIN: WE'LL NOT OFFER IT AT THIS

1 TIME, YOUR HONOR.

2

3 THE COURT: ALL RIGHT.

4

5 BY MR. BALDWIN:

6 Q NEXT DOCUMENT. 393-P, COULD YOU TELL US
7 WHAT THAT IS, DOCTOR?

8 A IT'S A LETTER FROM THE INDIANA STATE BOARD
9 OF HEALTH, 1961, TO MR. LOUIS PECKSTEIN,
10 ASSISTANT SECRETARY, OR THAT WOULD BE A HIGHLY
11 PLACED LAWYER WITH THE COMPANY, OF THE PHILIP
12 CAREY MANUFACTURING COMPANY. AND THEY'RE ASKING
13 FOR THE CHEMICAL COMPOSITION OF CAREYTEMP
14 INSULATION, THEY'RE SAYING THE INFORMATION WILL
15 BE HELD IN STRICT CONFIDENCE AND USED ONLY TO
16 EVALUATE POTENTIAL HEALTH HAZARDS.

17 Q AND THAT IS AN EXAMPLE OF PHILIP CAREY
18 WANTING THEIR INFORMATION CONFIDENTIAL ABOUT THE
19 HAZARDS OF ASBESTOS?

20 A WELL, IT'S AN EXAMPLE OF THE STATE OFFERING
21 TO KEEP IT CONFIDENTIAL. I HAVE NO WAY OF
22 KNOWING WHETHER PHILIP CAREY HAD REQUESTED OR
23 DEMANDED CONFIDENTIALITY.

24

25

1 Q NEXT DOCUMENT. AND DOES THE SECOND PAGE OF
2 THAT 1961 EXHIBIT -- WOULD YOU READ JUST THE
3 PERTINENT PARTS OF THAT?

4 A THE MR. PECKSTEIN'S NOTE TO FILE SAYS MR.
5 EDWARDS, THE GENTLEMAN WHO HAD WRITTEN FROM THE
6 STATE OF INDIANA, "PHONED AND THANKED ME FOR MY
7 LETTER OF FEBRUARY 14. HE SAID THE ONLY
8 INGREDIENTS WE USE IN OUR CAREY TEMP WHICH IS
9 TOXIC IS THE ASBESTOS FIBER. HE SAID THE WORKMAN
10 HAD BEEN SAWING THE MATERIAL IN A CONFINED,
11 UNVENTILATED AREA USING NO MASKS NOR A DUST
12 COLLECTOR ON THE SAW. HE SAID THE COMPLAINTANTS
13 WERE OUR OWN CONTRACT DEPARTMENT WORKERS ACTING
14 THROUGH THE INDIANAPOLIS LOCAL."

15 Q IS THAT CLEAR KNOWLEDGE OF TWO THINGS, ONE
16 THAT ASBESTOS IS A HAZARDOUS PRODUCT, THAT IT
17 CONTAINED INGREDIENTS WHICH ARE TOXIC, AND THAT
18 IT IS BEING USED BY PEOPLE WHO DO INSULATION TYPE
19 WORK?

20 A YES.

21 Q NEXT NUMBER.

22
23 THE COURT: I DIDN'T GET THAT EXHIBIT
24 NUMBER, MR. BALDWIN.

25

1 MR. FLUGER: 399P, YOUR HONOR.

2

3 BY MR. BALDWIN:

4 Q AND 399Q. COULD YOU TELL US WHAT THAT IS,
5 DOCTOR?

6 A THIS IS PART OF A SERIES OF DOCUMENTS
7 RELATING TO THE HANDLING OF A WORKERS'
8 COMPENSATION CLAIM BROUGHT BY WILLIAM LATTO IN
9 1961. MR. LATTO'S -- THE DOCUMENT HERE INDICATES
10 THAT THE CAUSE OF, OR THE EXPOSURE WAS FROM
11 APPLYING ASBESTOS PRODUCTS COMMERCIALLY FOR A
12 NUMBER OF YEARS, AND THAT HE WAS CLAIMING THAT HE
13 HAD ASBESTOSIS.

14 Q NEXT DOCUMENT. THAT DOCUMENT CLEARLY SHOWS
15 THE MAN WAS AT LEAST CLAIMING THE DISEASE
16 ASBESTOSIS?

17 A YES.

18 Q SECOND PAGE OF THE SAME DOCUMENT. COULD YOU
19 READ THE IMPORTANT INFORMATION ON THAT?

20 A "OCCUPATION, ASBESTOS WORKER. EXPOSURE,
21 APPLYING ASBESTOS PRODUCTS COMMERCIALLY FOR
22 THIRTY-FIVE YEARS. HISTORY OF THE CLAIM, IT WAS
23 CONSIDERED BY THE BUREAU OF WORKMANS'
24 COMPENSATION AND ALLOWED FOR ASBESTOSIS AND
25 PERMANENT TOTAL DISABILITY AT A HEARING ON MAY 24,

1 1962."

2 Q SO, HERE'S A CLAIM FOR THE PURPOSES OF THE
3 BUREAU OF WORKMANS' COMPENSATION, AT LEAST WAS
4 DETERMINED TO HAVE ASBESTOSIS?

5 A YES.

6 Q 399R.

7 A THIS IS -- THIS ACTUALLY IS A DOCUMENT THAT
8 CAME OUT OF THE OWENS-CORNING FILES, AND IT'S
9 FROM THE WAR YEARS, 1943.

10 Q DOES IT RELATE -- MISTAKE, RIGHT? OH, OKAY.
11 THAT'S RIGHT. THAT'S THE SECOND PAGE. THIRD
12 PAGE OF THE SAME DOCUMENT IS AN OWENS-CORNING
13 DOCUMENT, IS THAT CORRECT, DOCTOR?

14 A YES.

15 Q GO AHEAD.

16 A AND THEY MENTIONED THAT THE "CELOTEX
17 CORPORATION NOW HAS A CEMENT-O-BOARD WHICH
18 CONSISTS OF CELOTEX BETWEEN TWO SHEETS OF
19 ASBESTOS BOARD."

20 Q DOES THAT INDICATE AN EXCHANGE OF
21 INFORMATION OR KNOWLEDGE FROM ONE COMPANY TO THE
22 OTHER?

23 A YES. IT INDICATES THAT THE CELOTEX
24 CORPORATION WAS IN THE ASBESTOS BUSINESS IN 1943,
25 AND THAT THIS WAS DISCUSSED IN AN INTERNAL

1 MEMORANDUM OF THE OWENS-CORNING COMPANY AT THAT
2 TIME.

3 Q ALL RIGHT. NEXT ONE. NOW, IF WE MAY HAVE
4 THE LIGHTS, PLEASE.

5

6 MR. BALDWIN: YOUR HONOR, ON THIS CHART,
7 COULD I HAVE LEAVE TO USE IT LATER BECAUSE
8 THERE'S A MATTER ON THERE THAT THE COURT RULED ON
9 THAT NEEDS TO BE TAKEN OFF BEFORE WE --

10

11 THE COURT: IT HAS NOT BEEN CORRECTED?

12

13 MR. BALDWIN: NO, SIR. WE'LL HAVE TO COME
14 BACK TO THAT CHART AFTER WE GET SOMEBODY TO COVER
15 UP THE PART THAT YOU LEFT OFF.

16

17 BY MR. BALDWIN:

18 Q WHAT IS THE NEXT ONE, ARMSTRONG? ALL RIGHT,
19 DOCTOR, WITH REFERENCE TO THE ARMSTRONG
20 CORPORATION --

21

22 THE COURT: OKAY. WELL, WE'LL TAKE A BREAK
23 UNTIL FIFTEEN UNTIL.

24

25 THE MARSHAL: ALL RISE.

1

2 (WHEREUPON, THERE WAS A SHORT RECESS IN THE
3 PROCEEDINGS, AFTER WHICH THEY RESUMED AS FOLLOWS:)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE MARSHAL: ALL RISE.

2

3 THE COURT: BE SEATED. READY?

4

5 MR. BALDWIN: YES, SIR.

6

7 BY MR. BALDWIN:

8 Q DR. CASTLEMAN, I BELIEVE YOU CAN TAKE YOUR
9 SEAT ON THE WITNESS STAND. BEFORE WE WIND UP ON
10 PHILIP CAREY, COULD YOU TELL US ABOUT THE QUEBEC
11 MINING STRIKE EPISODE, DOCTOR, JUST IN YOUR OWN
12 WORDS, VERY BRIEFLY?

13 A YES. CAREY OWNED MINING ACTIVITIES IN
14 CANADA, AND IN 1949 NEWSPAPER EXPOSES' WERE
15 PUBLISHED IN QUEBEC ABOUT CONDITIONS AT THE
16 MINING SUBSIDIARY OF PHILIP CAREY, WHICH WAS
17 CALLED QUEBEC ASBESTOS CORPORATION.

18 THE REPORTS INCLUDED DESCRIPTIONS OF WORKERS
19 WHO WERE, ACCORDING TO THE REPORT, DYING WITH
20 ASBESTOSIS, NOT RECEIVING ANY WORKER'S
21 COMPENSATION, THINGS TO THAT EFFECT.

22 AND THE GOVERNMENT WAS ALSO CRITICIZED FOR
23 NOT DOING ANYTHING ABOUT THE ASBESTOSIS PROBLEM
24 IN QUEBEC.

25 WITHIN A MONTH AFTER THESE STORIES APPEARED

1 IN THE NEWSPAPERS THERE WAS A HISTORIC STRIKE IN
2 QUEBEC WHICH LASTED FIVE MONTHS, AND SHUT DOWN
3 VIRTUALLY THE ENTIRE ASBESTOS MINING INDUSTRY IN
4 1949. AND THIS IS DESCRIBED IN A BOOK BY PIERRE
5 ELLIOT TRUDEAU, WHO WAS A YOUNG POLITICIAN AT THE
6 TIME, AND LATER BECAME PRIME MINISTER OF CANADA.
7 THE BOOK IS CALLED "THE ASBESTOS STRIKE".

8 Q AND THE CONNECTION BETWEEN PHILIP CAREY WAS
9 WHAT?

10 A WELL, CAREY OWNED THE MINING PROPERTY WHICH
11 WAS THE SUBJECT OF THE ORIGIANL EXPOSE' IN
12 JANUARY OF 1949, WHICH WAS FOLLOWED BY THE STRIKE
13 EFFECTING THE REST OF THE INDUSTRY STARTING IN
14 FEBRUARY OF 1949.

15 Q WOULD IT BE ACCURATE TO SUMMARIZE BY SAYING
16 THAT THE WHOLE RUCKUS WAS OVER THE HAZARDS OF
17 ASBESTOS?

18 A YES.

19 Q AND PEOPLE WORKING WITH ASBESTOS?

20 A YES.

21 Q AND THIS IS BACK IN THE '40'S?

22 A YES.

23 Q NOW, DOCTOR, WE HAVE A SUMMARY ON THE BOARD
24 HERE, PHILIP CAREY, OR CELOTEX, WHICH AGAIN IS
25 NOT OFFERED FOR EVIDENCE OR PRESENTED AS

1 EVIDENCE, BUT RATHER AS A TRIAL GUIDE, OR SUMMARY
2 OF YOUR TESTIMONY. WOULD YOU BRIEFLY GO OVER
3 THAT FOR US?

4 A YES. THE FIRST -- THE EARLIEST ITEM IS THE
5 1930 ASBESTOS MAGAZINE, WITH THE ARTICLE ON
6 PULMONARY ASBESTOSIS. THE PHILIP CAREY COMPANY
7 AND ITS QUEBEC SUBSIDIARY BOTH HAD FULL PAGE
8 ADVERTISEMENTS IN THE SAME ISSUE, MARCH, 1930, OF
9 THE TRADE MAGAZINE.

10 AND THEN IN 1944 CAREY WAS SELLING A --
11 AGAIN HAD A FULL PAGE ADVERTISEMENT FOR AN ALL
12 ASBESTOS PRODUCT, SO-CALLED ALL ASBESTOS PRODUCT,
13 IN THE SAME ISSUE OF A HEATING AND VENTILATING
14 MAGAZINE, THE MAGAZINE DISTRIBUTED TO COMMERCIAL
15 USERS OF ASBESTOS INSULATION MATERIALS. AND THIS
16 NEWSPAPER, I MEAN, THIS TRADE MAGAZINE, ALSO
17 CONTAINED AN ARTICLE ON DUST DISEASES INCLUDING
18 ASBESTOSIS, DESCRIBING THAT ASBESTOSIS WAS A
19 HAZARD IN THE INSULATING INDUSTRY, THAT THERE WAS
20 NO MINIMAL SAFE LEVEL THAT HAD YET BEEN
21 ESTABLISHED, THAT THE DISEASE WAS A PROGRESSIVE
22 DISEASE, THAT THE DISEASE WAS A VERY, VERY
23 SERIOUS THREAT TO LIFE.

24 AND THEN I CAN'T REALLY SEE THE CHART, BUT I
25 THINK --

1 Q NUMBER FOUR SAYS, "1955 WORKER'S
2 COMPENSATION CLAIMS".

3 A THEN COME THESE WORKERS' COMPENSATION CLAIMS
4 INVOLVING PHILIP CAREY. I THINK THERE ARE ABOUT
5 A HALF DOZEN ON THIS LIST, IN WHICH CAREY WAS A
6 DEFENDANT, ALONG WITH ARMSTRONG CORK, AND IN SOME
7 CASES OWENS-CORNING, JOHNS-MANVILLE.

8 AND SO, IN SOME OF THESE CLAIMS, INCLUDING
9 THE RILEY CASE, PHILIP CAREY WAS INVOLVED IN THE
10 RILEY CASE, THE MAN DIED WITH LUNG CANCER BY THE
11 TIME THIS PROCEEDING WAS FINISHED, AND CAREY WAS
12 INVOLVED AS A DEFENDANT IN THAT, ALONG WITH, AS I
13 SAY, A NUMBER OF OTHERS.

14 AND SOME OF THESE CONTRACT UNIT PROBLEMS
15 WITH ASBESTOSIS EVEN CAME TO THE ATTENTION OF
16 HEALTH OFFICIALS, SUCH AS THE INDIANA HEALTH
17 OFFICIALS, WHO WROTE TO MR. PECKSTEIN ABOUT THE
18 PRESENCE OF ASBESTOS IN CAREYTEMP INSULATION
19 BEING A TOXIC MATERIAL, IN 1961.

20 Q DO THOSE ACTIONS, DOCTOR, IN YOUR OPINION,
21 INDICATE A CLEAR KNOWLEDGE ON THE PART OF PHILIP
22 CAREY, GOING BACK TO AS FAR AS 1930, THAT
23 ASBESTOS WAS A DANGEROUS PRODUCT AND THAT
24 ASBESTOSIS WAS A DANGEROUS DISEASE THAT WAS LIFE
25 THREATENING?

1 A YES.

2 Q AND CHARACTERIZED -- AS YOU'VE CHARACTERIZED
3 AS INCURABLE, PROGRESSIVE, AND IRREVERSIBLE?

4 A YES. ALMOST THE IDENTICAL LANGUAGE YOU JUST
5 USED WAS IN THE THE HEATING AND VENTILATING
6 MAGAZINE ARTICLE IN 1944.

7 Q AND WE HAVE SEEN A NUMBER OF SUBSCRIBERS,
8 ADVERTISERS IN THAT ASBESTOS MAGAZINE, HAVE WE
9 NOT?

10 A YES.

11 Q ALL RIGHT, SIR. NOW, LET'S GO ON TO TURN
12 OUR ATTENTION TO ARMSTRONG. DO YOU HAVE EXAMPLES --
13 WELL, FIRST OF ALL, IF WE LOOK AT THE BOOK -- DO
14 YOU HAVE A COPY OF THE NOTEBOOK THAT THE JUDGE
15 HAS FURNISHED TO THE JURY ON PRODUCTS LIST, PAGE
16 SEVEN? IF THE JURY CARES TO TURN TO THAT PAGE,
17 YOU MAY BE ABLE TO FOLLOW, AND THAT WAY WE WON'T
18 HAVE TO PUT IT ON THE PROJECTOR AND TURN THE
19 LIGHTS OUT. IT'S A PRODUCTS LIST, I BELIEVE.

20 A YES, I HAVE THAT.

21 Q WOULD YOU JUST KIND OF RUN DOWN THAT, DR.
22 CASTLEMAN, AND TELL US THE RELATIONSHIP BETWEEN
23 ARMSTRONG AND KEASBY-MATTISON?

24 A WELL, THE LIST INDICATES --

25 Q FIRST OF ALL, WHERE THE WORD "K-M" APPEARS

1 ON THAT PAGE, WHAT DOES THAT REFER TO?

2 A KEASBY-MATTISON.

3 Q ALL RIGHT. GO AHEAD.

4 A IT'S EVIDENT FROM THIS PAGE THAT ARMSTRONG --

5 Q PAGE SEVEN YOU'RE ON?

6 A YES, SIR.

7 Q ALL RIGHT.

8 A A NUMBER OF ARMSTRONG PRODUCTS, INSULATION
9 PRODUCTS, WERE IN FACT MANUFACTURED BY
10 KEASBY-MATTISON, AND THERE ARE EVEN A COUPLE OF
11 OTHER PRODUCTS I SEE LISTED AS CONTESTED
12 PRODUCTS, SO I WON'T GET INTO THEM. BUT THERE
13 ARE OTHER PRODUCTS THAT ARE MANUFACTURED BY
14 KEASBY-MATTISON, AND THIS APPARENTLY GOES BACK TO
15 1945, THAT THESE AGREEMENTS, ARRANGEMENTS EXISTED
16 BETWEEN KEASBY-MATTISON COMPANY, THE
17 MANUFACTURER, AND ARMSTRONG CORK, WHICH WAS
18 DISTRIBUTING THESE PRODUCTS AS THEIR OWN.

19

20 MR. DEHAY: EXCUSE ME. I OBJECT TO THE
21 TESTIMONY OF THE WITNESS WITH RESPECT TO THE
22 DISTRIBUTION, BECAUSE THAT WOULD VIOLATE RULE
23 602. THE WITNESS HAS NO PERSONAL KNOWLEDGE OF
24 THAT, YOUR HONOR.

25 IT WOULD NOT BE SUBJECT TO EXPERT TESTIMONY

1 PROVIDED BY RULE 703.

2 IT REPRESENTS A LEGAL CONCLUSION ON THE PART
3 OF THIS WITNESS, AND THIS WOULD REPRESENT A LAY
4 OPINION PRECLUDED BY RULE 701.

5

6 THE COURT: OKAY. OVERRULED. I THINK YOUR
7 OBJECTION RELATES TO THE WEIGHT, AND COUNSEL CAN
8 ADDRESS PORTIONS OF IT ON CROSS-EXAMINATION.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q DR. CASTLEMAN, I DIDN'T WANT YOU TO GET MUCH
2 FURTHUR THAN THAT ANYWAY EXCEPT TO SHOW THAT
3 ARMSTRONG PURCHASED MANY OF ITS PRODUCTS FROM
4 KEASBY-MATTISON THROUGH THE YEARS.

5 A YES.

6 Q AND WAS THAT OR NOT ACCORDING TO YOUR
7 INVESTIGATION THE SUBJECT OF A SO-CALLED LABELING
8 AGREEMENT?

9 A YES. I'VE HEARD TERMS LIKE "LABELING" OR
10 "REBRANDING" AGREEMENTS WHERE --

11 Q COULD YOU TELL US BASICALLY WHAT ONE OF
12 THOSE AGREEMENTS IS?

13 A WELL, IT'S JUST LIKE SEARS MIGHT HAVE
14 SOMEBODY MANUFACTURE A PRODUCT AND SEARS PUTS
15 THEIR OWN LABEL ON IT AS A SEARS PRODUCT,
16 WHEREAS, IN FACT, ITS MANUFACTURED BY SOMEBODY
17 ELSE.

18 Q WHERE ARMSTRONG MIGHT PURCHASE THESE
19 PRODUCTS FROM KEASBY-MATTISON AND STAMP THE
20 ARMSTRONG LABEL ON IT AND SELL IT, IS THAT WHAT
21 YOU'RE SAYING?

22 A RIGHT.

23 Q IS THIS A COMMON PRACTICE IN THE INDUSTRY?

24 A YES.

25 Q AND DOES THAT OR NOT EXHIBIT A FREE EXCHANGE

1 BETWEEN KEASBY-MATTISON AT LEAST AND ARMSTRONG OR
2 EXHIBIT A FREE EXCHANGE BETWEEN INDUSTRIES AS
3 WE'VE TALKED ABOUT, OF INFORMATION?

4 A IT DOES.

5 Q AND HAVE WE SEEN KEASBY-MATTISON IN ANY OF
6 THESE OTHER DOCUMENTS THAT WE'VE REVIEWED?

7 A YES.

8 Q AND WHERE HAVE WE SEEN THE NAME?

9 A KEASBY-MATTISON WAS A RECIPIENT OF THE
10 STUDIES DONE BY DR. GARDNER IN 1943 SHOWING THAT
11 ASBESTOS CAUSES A HIGH RATE OF LUNG CANCER IN
12 MICE BY INHALATION. THIS WAS THE REPORT FROM
13 DR. GARDNER WHICH WAS TRANSMITTED BY THE KEASBY
14 AND MATTISON PEOPLE TO THEIR PARENT COMPANY IN
15 ENGLAND, TURNER AND NEWELL.

16 Q AND ARE THESE AGREEMENTS THAT WE'RE TALKING
17 ABOUT ON PAGE SEVEN OF THE NOTEBOOK GOING BACK TO
18 THAT PERIOD?

19 A PRACTICALLY GO BACK TO 1945.

20
21 MR. DEHAY: YOUR HONOR PLEASE, I OBJECT TO
22 THAT BECAUSE THAT REPRESENTS THE OPINION OF THIS
23 WITNESS PRECLUDED BY THE OPINION RULE IN THE
24 RULES OF EVIDENCE. PURE SPECULATION ON HIS PART,
25 YOUR HONOR.

1

2 BY MR. BALDWIN:

3

4 Q I'M NOT ASKING YOU TO SPECULATE. I'M JUST

5

6 ASKING YOU TO LOOK AT THIS BOOK THERE AND SEE IF --

7

8 THE COURT: I THINK IT GOES TO THE WEIGHT.

9

10 BY MR. BALDWIN:

11

12 Q DR. CASTLEMAN, JUST LOOK AT THE BOOK THERE
13 AND SEE IF SOME OF THOSE ARRANGEMENTS WHERE THEY
14 PURCHASED KEASBY AND MATTISON MATERIALS THAT GO
15 BACK TO THE FORTIES.

16

17 A THEY DO.

18

19 Q ALL RIGHT. NOW, DID ARMSTRONG BUY -- ARE
20 YOU AWARE THAT ARMSTRONG BOUGHT
21 BALDWIN-EHERT-HILL AND/OR KEENE PRODUCTS, TOO,
22 THROUGH THE YEARS UNDER THE SAME TYPE
23 ARRANGEMENT?

24

25 A WELL, OR EHERT, WHICH IS ANOTHER
PREDECESSOR, TOO.

26

27

28 MR. WEBER: YOUR HONOR, WE WOULD HAVE
29 EXACTLY THE SAME OBJECTION, YOUR HONOR, AS STATED
30 BY MR. DEHAY.

31

1 THE COURT: SAME RULING.
2

3 MR. WEBER: THANK YOU.
4

5 BY MR. BALDWIN:
6

Q I DIDN'T GET YOUR ANSWER.

A YES. KEENE, OR RATHER, PREDECESSORS TO THE
8 KEENE CORPORATION DID SUPPLY ASBESTOS RODUCTS TO
9 ARMSTRONG. IN ADDITION, TO KEASBY AND MATTISON.

10

11 MR. WEBER: YOUR HONOR, WE WOULD OBJECT TO
12 THE PHRASIOLOGY "PREDECESSORS TO KEENE" BECAUSE
13 IT CARRIES A LEGAL CONNOTATION, AND WE OBJECT TO
14 THE WITNESS CONFINING HIMSELF TO MAGNESIA OR
15 BALDWIN-EHERT-HILL, WHICH IS WHAT HE'S PREVIOUSLY
16 DONE.

17

18 THE COURT: WELL, I THINK THE JURY
19 UNDERSTANDS THAT THAT'S A DISPUTED ASPECT OF THIS
20 CASE AND THE WITNESS IS EXPRESSING OPINIONS AND
21 THE JURY WILL HAVE TO EXERCISE ITS JUDGEMENT AT
22 THE PROPER TIME.

23

24 BY MR. BALDWIN:
25

Q ONE FINAL QUESTION. AT KEASBY-MATTISON AT

1 THIS POINT. IS KEASBY-MATTISON NOW OR UP TO
2 RECENT DATE AT LEAST AND THROUGH THE YEARS BEEN A
3 PROMINENT MEMBER OF THE ASBESTOS INDUSTRY?

4 A YES. THIS WAS AT LEAST UNTIL THE 1960'S.

5 Q AND A PARTICIPANT IN MANY OF THE
6 ORGANIZATIONS?

7 A YES.

8 Q NOW, DO YOU HAVE ANY EVIDENCE OF WORKMANS'
9 COMPENSATION CLAIMS IN WHICH ARMSTRONG WAS
10 INVOLVED?

11 A YES.

12 Q COULD YOU TELL US ABOUT THAT VERY BRIEFLY?

13 A THIS IS THE LIST OF WORKERS' COMPENSATION
14 CONTRACT UNIT CLAIMS WHICH I REFERRED TO EARLIER
15 WHICH IS TABULATED IN MY BOOK, AND THIS LIST IS
16 SOMETHING LIKE I THINK THIRTY-NINE CLAIMS THAT
17 WERE FILED PRIOR TO 19 -- BETWEEN 1952 AND 1963
18 IN WHICH ARMSTRONG WAS A DEFENDANT. THIS IS A
19 LIST OF CLAIMS THAT WAS PRODUCED BY ARMSTRONG
20 COMPANY IN THE FIRST PLACE. THAT'S HOW I WAS --

21 Q DID THAT THIRTY SOME ODD CLAIMS COME OUT OF
22 THE FILES OF THE ARMSTRONG COMPANY?

23 A YES.

24 Q AND DID THEY INVOLVE CLAIMS OF THIRTY ODD
25 WORKERS WHO HAD CLAIMS FOR ASBESTOSIS?

1 A FOR ASBESTOSIS, SOMETIMES INCLUDING LUNG
2 CANCER AS WELL, YES.

3 Q ALL RIGHT, SIR. SO, WOULD THAT BE ANOTHER
4 EXAMPLE OF ARMSTR G HAVING ACTUAL KNOWLEDGE OF
5 THE CLAIM THAT ASBESTOSIS WAS A DANGEROUS
6 DISEASE, THAT ASBESTOS WAS A DANGEROUS PRODUCT,
7 AND THAT IT COULD CAUSE CANCER?

8 A YES. INVOLVING INSULATION WORKERS SUCH AS
9 MR. RILEY.

10 Q I BELIEVE YOU HAVE CHARACTERIZED MR. RILEY'S
11 CASE PREVIOUSLY AS HE DIED OF CANCER, LUNG
12 CANCER?

13 A YES.

14 Q NOW, WE HAVE KIND OF A SUMMARY BOARD ON
15 ARMSTRONG WHICH IS AGAIN IS NOT EVIDENCE BUT IS
16 USED AS A GUIDE TO SUMMARIZE AND CAPSULATE YOUR
17 TESTIMONY. COULD YOU READ OVER THAT FOR US,
18 DOCTOR, AND SUMMARIZE THAT?

19 A IT JUST REITERATES THAT THE COMPANY WAS A
20 DEFENDANT IN THE WORKERS' COMPENSATION ACTIONS
21 INVOLVING NUMEROUS INSULATION WORKERS CLAIMING TO
22 HAVE ASBESTOSIS AND IN SOME CASES LUNG CANCER AS
23 WELL DURING THE YEARS 1952 TO 1963. THE FIRST OF
24 THESE CLAIMS IN 1952, IN FACT, WAS A WORKER WHO
25 DIED OF LUNG CANCER.

1 BY MR. BALDWIN:

2 Q AND BASED ON THEN YOUR SUMMARY OF, YOUR
3 KNOWLEDGE RATHER, OF THE TESTIMONY THAT YOU'VE
4 GIVEN ABOUT ARMSTRONG, AND THE DOCUMENTS AND
5 OTHER DATA AVAILABLE AGAINST ARMSTRONG, DO YOU
6 HAVE AN OPINION, DOCTOR, AS TO WHETHER OR NOT
7 ARMSTRONG KNEW OF THE DANGERS OF ASBESTOS, THAT
8 IT WOULD CAUSE ASBESTOSIS, AND COULD CAUSE
9 CANCER, GOING BACK AS FAR AS AT LEAST 1952?

10 A YES, I DO.

11 Q AND WHAT IS YOUR OPINION?

12 A MY OPINION IS THAT THEY HAD AMPLE
13 OPPORTUNITY TO KNOW THOSE THINGS IN 1952.

14 Q ALL RIGHT, SIR. DO YOU KNOW OF ANY INCIDENT
15 WHERE ARMSTRONG TESTED ITS PRODUCT AT ANY TIME,
16 OR ANY DOCUMENT WHERE THE ARMSTRONG COMPANY
17 TESTED ITS PRODUCT AT ANY TIME TO DETERMINE THE
18 DUST LEVELS THAT MIGHT BE GENERATED WHEN IT WAS
19 USED BY AN INSULATION WORKER OR AN END PRODUCT
20 USER?

21 A I HAVE NEVER SEEN ANY SUCH DOCUMENTATION.

22 Q AND WOULD THE SAME BE TRUE OF CELOTEX, WHICH
23 WE'VE JUST COVERED?

24 A YES.

25 Q PHILIP CAREY?

1 A YES.

2 Q DO YOU KNOW OF ANY DOCUMENT OR ANY OTHER
3 INFORMATION THAT PHILIP CAREY OR CELOTEX EVER
4 TESTED ANY OF ITS PRODUCTS TO DETERMINE WHAT ITS
5 DUST LEVELS MIGHT BE WHEN PUT TO USE BY AN
6 INSULATOR OR OTHER END PRODUCT USER?

7 A I HAVE NEVER SEEN ANY SUCH DOCUMENTATION
8 PRODUCED TO THE EFFECT THAT THESE PRODUCTS WERE
9 TESTED, OR TO THE EFFECT THAT WARNING LABELS WERE
10 EVER PLACED ON SUCH PRODUCTS.

11 Q AND WHAT COMPANY ARE YOU REFERRING TO THERE?

12 A PHILIP CAREY, WHICH WAS THEN LATER ABSORBED
13 BY CELOTEX AND JIM WALTER CORPORATION.

14 Q ALL RIGHT, SIR. AND WOULD THE SAME BE TRUE,
15 I DON'T THINK I'VE ASKED YOU THE QUESTION, ABOUT
16 OWENS-CORNING, I KNOW I DID ASK YOU, I THINK,
17 ABOUT OWENS-ILLINOIS, AS TO WHETHER OR NOT YOU
18 HAVE ANY DOCUMENTATION OR ANY OTHER EVIDENCE TO
19 SUPPORT ANY INDICATION THAT OWENS-CORNING
20 FIBREGLAS EVER TESTED ITS OWN PRODUCT TO
21 DETERMINE THE DUST LEVELS WHEN USED BY INSULATORS
22 OR OTHER END USERS?

23 A I HAVE NEVER SEEN ANY SUCH TESTING.

24 Q DOCTOR, WOULD YOU MIND COMING BACK TO THIS
25 MACHINE? WE'LL TALK ABOUT FIBREBOARD A LITTLE

1 BIT. TRY TO HURRY ALONG HERE.

2
3 MR. STEVENS: YOUR HONOR, BEFORE THE LIGHTS
4 GO OUT, I BELIEVE HE IS FIXING TO INTRODUCE THE
5 1930 MAGAZINE, AND I HAVE OBJECTION TO IT FOR
6 FIBREBOARD CORPORATION. MR. BALDWIN IS GOING TO
7 READ A PORTION OF IT SHOWING THAT WE HAVE
8 ENLARGED OUR CAPABILITIES FOR INSULATION
9 PRODUCTS, AND I BELIEVE THAT INJECTS UTILITY,
10 BECAUSE I WILL HAVE TO REBUT IT AS EVIDENCE OF
11 MILITARY SPECIFICATIONS FOR WAR VESSELS IN THE
12 PACIFIC THEATER, AND ALSO THE FACT THAT IT WAS
13 REQUIRED BY THE MILITARY GOVERNMENT TO USE
14 ASBESTOS-CONTAINING INSULATION PRODUCTS. AND I
15 OBJECT TO IT AS INTRODUCING UTILITY INTO THE
16 TRIAL.

17

18 THE COURT: OVERRULED.

19

20 MR. BALDWIN: YOUR HONOR, WE'RE NOT
21 ATTEMPTING TO DO THAT, THE ONLY THING WE'RE
22 OFFERING THIS EXHIBIT FOR IS TO SHOW THAT THEY
23 WERE A SUBSCRIBER IN THE MAGAZINE, AND THAT THE
24 SAME MAGAZINE CONTAINED AN ARTICLE ON ASBESTOSIS.

25

1 BY MR. BALDWIN:

2 Q AND THIS IS PLAINTIFFS' EXHIBIT 399-J,
3 MARCH, 1930, THE SAME ISSUE OF ASBESTOS MAGAZINE
4 THAT WE TALKED ABOUT PREVIOUSLY, IS IT NOT,
5 DOCTOR?

6 A THAT'S RIGHT, IT'S THE SAME MAGAZINE.

7 Q NO, WE DID NOT WANT THAT, JUST THE ONE THAT
8 SHOWS WHERE -- AND IS THERE AN ADVERTISEMENT IN
9 THIS MAGAZINE BY FIBREBOARD?

10 A NO. THERE IS A NEWS REPORT ABOUT
11 FIBREBOARD.

12 Q ALL RIGHT.

13 A FIBREBOARD'S ACTIVITIES ON THE WEST COAST.

14 Q IS THAT THE REFERENCE -- ALL RIGHT. THERE'S
15 A REFERENCE TO FIBREBOARD IN THE MAGAZINE, IS
16 THAT WHAT YOU'RE SAYING, ITS ACTIVITIES?

17 A YES.

18 Q WITHOUT GOING INTO WHAT IT IS?

19 A YES.

20 Q NEXT EXHIBIT?

21 A AND THIS IS THE ASBESTOSIS ARTICLE.

22 Q IS THIS THE ARTICLE ON ASBESTOSIS?

23 A YES, SIR.

24 Q NOW, WHEN WE HAD THIS SAME MAGAZINE UP HERE
25 BEFORE ON CAREY WE WERE NOT ABLE TO FIND IT IN

1 OUR COPY OF THE ASBESTOS ARTICLE. IS THAT
2 ARTICLE IN THIS SAME MAGAZINE?

3 A YES. THAT'S WHAT WE JUST SHOWED THE JURY
4 RATHER BRIEFLY.

5 Q ALL RIGHT, SIR.

6

7 THE COURT: MR. NORMAN, IS THERE ANOTHER
8 MARSHAL DOWNSTAIRS?

9

10 MR. NORMAN: YOUR HONOR, I HAVE INFORMATION
11 THAT THERE IS. I HAVE NOT SEEN HIM PERSONALLY.

12

13 THE COURT: OKAY.

14

15 BY MR. BALDWIN:

16 Q THIS IS PLAINTIFFS' EXHIBIT 402-D, AGAIN
17 COPIES OF WHICH WE WON'T GO OVER, BECAUSE WE'VE
18 ALREADY GONE OVER THEM ONCE, OF THE NIMA,
19 NATIONAL INSULATION MANUFACTURERS ASSOCIATION, IS
20 THAT CORRECT?

21 A YES, SIR.

22 Q AND DOES IT SHOW FIBREBOARD AS A MEMBER?

23 A YES, IT DOES, IN 1960.

24 Q AND ALSO KEASBY-MATTISON?

25 A YES.

1 Q AND BALDWIN-EHRET?

2 A BALDWIN-EHRET-HILL, YES.

3 Q AND PITTSBURG-CORNING?

4 A YES.

5 Q AND OWENS-CORNING FIBREGLAS?

6 A YES.

7 Q AND WITHOUT SHOWING THE OTHER TWO ARTICLES,
8 WE'VE ALREADY SHOWN THEM TO THE JURY ONCE, SO I
9 WON'T DO IT AGAIN, IF YOU SUM UP THOSE THREE
10 ARTICLES, THE TWO ARTICLES, IT IS THAT THEY
11 PROPOSED A HEALTH PROGRAM AT ONE OF THE MEETINGS,
12 AT THE VERY NEXT MEETING THEY REJECTED THE HEALTH
13 PROGRAM, AND THEN IN THE FINAL MEETING THEY
14 DISCUSSED JOHNS-MANVILLE LABELING ITS PRODUCTS?

15 A YES. THIS IS IN THE PERIOD 1960 AND 1964.

16 Q NOW, IF WE MAY HAVE THE CHART ON FIBREBOARD.
17 WOULD YOU SUMMARIZE THAT FOR US, DOCTOR?

18 A FIBREBOARD WAS -- THEIR ACTIVITIES ON THE
19 WEST COAST WERE DESCRIBED IN THE TRADE MAGAZINE
20 IN 1930, AND THEY WERE A PROMINENT MEMBER OF THE
21 INDUSTRY, RATHER THEIR PREDECESSOR, PLANT RUBBER
22 AND ASBESTOS COMPANY, WAS.

23 Q THAT SAME MAGAZINE FEATURED AN ARTICLE ON
24 ASBESTOSIS?

25 A YES, SIR. AND THEN DURING THE PERIOD, IN

1 THE 1950'S AND THE 1960'S, THERE WERE A NUMBER OF
2 WORKER'S COMPENSATION CONTRACT UNIT CLAIMS,
3 INCLUDING SOME WITH -- MANY WITH ASBESTOSIS, AND
4 SOME AS WELL WITH LUNG CANCER, INCLUDING MR.
5 RILEY'S CLAIM, INVOLVING NUMEROUS NOTICES TO THE
6 DEFENDANT COMPANIES IN EACH CASE.

7 Q AND IS THERE A DOCUMENT, MEMA, AND THE
8 PRODUCT OFFERS NO HAZARD TO WORKMEN?

9 A YES. THIS IS SOMETHING THAT HASN'T BEEN
10 MENTIONED. THIS IS MIMA, AS OPPOSED TO NIMA,
11 MIMA BEING THE PREDECESSOR TO NIMA, CALLED THE
12 MAGNESIA INSULATION MANUFACTURERS ASSOCIATION.
13 AND MIMA PUBLISHED A GUIDE TO THE USE OF EIGHTY-
14 FIVE PERCENT MAGNESIA INSULATION IN 1955. AND IN
15 THIS GUIDE, WHICH CONTAINED NUMEROUS DESCRIPTIONS
16 OF HOW YOU WOULD APPLY THERMAL INSULATION --

17
18 MR. STEVENS: YOUR HONOR, I WOULD LIKE TO
19 HAVE AN OPPORTUNITY TO REVIEW THE ARTICLE
20 THAT THIS WITNESS IS SPEAKING FROM, BECAUSE HE'S
21 SEEKING THINGS THAT ARE HEARSAY TO MY CLIENT AS
22 FAR AS I KNOW, AND I WOULD LIKE AN OPPORTUNITY TO
23 AT LEAST REVIEW THAT DOCUMENT BEFORE HE BEGINS TO
24 TESTIFY BEFORE THIS JURY, SO I HAVE A RIGHT TO
25 OBJECT TO THE OPINION HE'S ADDRESSING TO,

1 AND WOULD ALSO LIKE TO CROSS-EXAMINE HIM AS TO THE
2 DOCUMENT. IT DENIES ME A RIGHT OF
3 CROSS-EXAMINATION OF THE WITNESS.

4

5 THE COURT: WELL, OVERRULED.

6

7 BY MR. BALDWIN:

8 Q ARE YOU AWARE OF THE DOCUMENT THAT YOU'RE
9 TALKING ABOUT?

10 A YES. THIS IS A TYPESET PUBLISHED DOCUMENT
11 IN 1955. AN EARLIER VERSION OF IT CAME OUT IN
12 1949.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q AND IT REFERS TO WHAT?

2 A IT DESCRIBES HOW YOU APPLY MAGNESIA
3 INSULATION PRODUCTS, AND IT SAYS THAT IN THE 1955
4 EDIT, IT SAYS THESE WORDS, THAT THE PRODUCT
5 QUOTE, OFFERS NO HAZARD TO THE WORKMEN. THAT'S A
6 SPECIFIC STATEMENT THAT IS CONTAINED AND A NUMBER
7 OF COMPANIES ARE MENTIONED IN THE N.I.M.A. MANUAL
8 WHICH I'M REFERRING TO HERE, INCLUDING PRODUCTS
9 OF FIBREBOARD COMPANY.

10 Q ALL RIGHT, SIR. AND THE NEXT ITEM?

11 A THE NEXT ITEM ARE THE N.I.M.A. MINUTES,
12 WHICH WE'VE JUST DISCUSSED, WHERE THE HEALTH
13 PROGRAM IDEA WAS RAISED IN 1960 AMONG THE MEMBERS
14 OF THE INSULATION MANUFACTURERS ASSOCIATION AND
15 DROPPED OR REJECTED LATER IN 1960, THEN IN 1964
16 JOHNS-MANVILLE'S USE OF A WARNING LABEL ON ITS
17 INSULATION PRODUCTS WAS QUOTED VERBATUM IN THE
18 MINUTES OF THE TRADE ASSOCIATION IN 1964.

19 Q THOSE ARE THE DOCUMENTS WE'VE SEEN EARLIER?

20 A YES.

21 Q NOW, DOCTOR, BASED ON THIS INFORMATION, THE
22 INFORMATION THAT YOU HAVE GATHERED ON FIBREBOARD,
23 DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
24 FIBREBOARD HAD KNOWLEDGE THAT THERE WAS SUCH A
25 DISEASE AS ASBESTOSIS, THAT IT WAS A SERIOUS

1 DISEASE, AND IT WOULD CAUSE SERIOUS BODILY
2 CONDITIONS, AND THAT ASBESTOS WAS HARMFUL GOING
3 BACK TO THE THIRTIES?

4 A YES, I DO.

5
6 MR. STEVENS: YOUR HONOR, I'M GOING TO
7 IMPOSE A 703 OBJECTION ON THE BASIS OF THIS
8 OPINION. THERE IS NO FOUNDATION FOR IT IN THE
9 EVIDENCE.

10

11 THE COURT: WELL, THE JURY UNDERSTANDS THIS
12 WITNESS IS STATING HIS OPINION. OVERRULED.

13

14 BY MR. BALDWIN:

15 Q NOW, DOCTOR, DO WE HAVE EVIDENCE OF
16 FIBREBOARD PARTICIPATING IN THE ASBESTOS MAGAZINE
17 AND THE TWO ADDITIONAL TRADE ORGANIZATIONS?

18 A WELL, WE HAVE EVIDENCE OF THE COMPANY BEING
19 PREDOMINATELY DESCRIBED IN THE TRADE MAGAZINE AND
20 PARTICIPATING IN THESE TRADE -- THESE TRADE
21 ASSOCIATIONS, THE PUBLICATION FOR THE PUBLIC, AND
22 THE MINUTES NOT MADE PUBLIC IN THE 1960'S, YES.

23 Q WERE THEY -- DID THEY HAVE FREE ACCESS THEN
24 TO INFORMATION, EXCHANGE OF IDEAS BETWEEN OTHER
25 MEMBERS OF THE INDUSTRY THROUGH THOSE VARIOUS

1 VEHICLES THAT YOU'VE JUST DESCRIBED?

2 A YES.

3 Q NOW, WE'LL TALK ABOUT PITTSBURGH-CORNING.

4 FIRST OR ALL, DOCTOR, DO YOU KNOW, OR DO YOU KNOW
5 WHETHER OR NOT PITTSBURGH-CORNING IS A JOINT
6 VENTURE BETWEEN PITTSBURGH PLATE GLASS AND THE
7 CORNING CORPORATION?

8 A YES, I DO.

9 Q FIRST, DOCTOR, WE'RE AT 399A, MAY 16, 1962,
10 IS A LETTER FROM RUDDICH TO BAUMNER, AND WHAT
11 DOES THAT PORTRAY, DOCTOR?

12 A THIS IS A LETTER TO THE VICE PRESIDENT OF
13 PITTSBURGH-CORNING FROM A SAFETY AND PLANT
14 PROTECTION MANAGER AT PITTSBURGH PLATE GLASS
15 COMPANY, AND HE ATTACHES A NUMBER OF ARTICLES
16 RELATING TO THE HEALTH HAZARDS OF ASBESTOS. SOME
17 OF THE ARTICLES ARE CALLED ASBESTOSIS, SOME OF
18 THEM ARE RECOGNIZABLE TO ME AS ARTICLES ABOUT THE
19 HAZARDS OF ASBESTOS. THIS ONE CALLED THE
20 "HYGIENIC GUIDE SERIES ON ASBESTOS" IS SOMETHING
21 FROM THE AMERICAN INDUSTRIAL HYGIENE ASSOCIATION,
22 AND IT MAKES PROMINENT MENTION OF THE FACT THAT
23 ASBESTOS WAS SUSPECTED OF CAUSING CANCER. MR.
24 BALDWIN, I THINK HAD WRITTEN THE WORD "CANCER" ON
25 HERE. IT DID NOT APPEAR ON THE ORIGINAL LETTER,

1 JUST TO MAKE IT CLEAR TO THE JURY, AS THE LETTER
2 ACTUALLY WENT TO THE VICE PRESIDENT OF
3 PITTSBURGH-CORNING, AND THERE'S ALSO MENTION
4 THERE OF THE INDUSTRIAL HYGIENE FOUNDATION DOWN
5 BELOW AND THE AVAILABILITY OF ITS SERVICES TO
6 PITTSBURGH-CORNING CORPORATION.

7 Q NOW, TO PUT THIS IN PROSPECTIVE, IS IT NOT A
8 FACT THAT THE PITTSBURGH-CORNING OPERATION BEGAN
9 IN JUNE OR JULY OF 1962?

10 A IT BEGAN IN 1962. PITTSBURGH-CORNING BECAME
11 A MANUFACTURER OF THERMAL INSULATION PRODUCTS
12 CONTAINING ASBESTOS IN THEM.

13 Q THEY HAD AMONG OTHER THINGS, THIS PLANT
14 LOCAL OVER HERE IN TYLER, TEXAS, IS THAT NOT
15 CORRECT?

16 A YES, THAT'S CORRECT.

17 Q AND THIS LETTER, DOES IT INDICATE THEN, AT
18 LEAST ASSUMING THE PLANT BEGAN IN JULY OF '62,
19 THAT FROM THE VERY INCEPTION OF
20 PITTSBURGH-CORNING THEY HAD INFORMATION ABOUT
21 ASBESTOS AND THE DANGERS OF ASBESTOS AS IT
22 RELATED TO ASBESTOSIS, PARTICULARLY ASBESTOS AND
23 CANCER, IS THAT TRUE?

24 A YES, THE LETTER SO INDICATES.

25 Q AND IT CAME FROM PITTSBURGH PLATE GLASS

1 WHICH OWNED FIFTY PERCENT OF PITTSBURGH-CORNING,
2 IS THAT RIGHT?

3 A RIGHT.

4 Q NEXT DOCUMENT. AND AGAIN, DID THAT DOCUMENT
5 MAKE THE SERVICES OF THE INDUSTRIAL HYGIENE
6 FOUNDATION AVAILABLE TO PITTSBURGH-CORNING?

7 A YES.

8 Q AND THE INDUSTRIAL HYGIENE FOUNDATION IS THE
9 ONE THAT PUBLISHED THE ARTICLE ABOUT CANCER, OR
10 PASSED THE ARTICLE ABOUT CANCER OUT TO ITS
11 MEMBERS, BUT THAT WOULD HAVE BEEN LONG BEFORE
12 THIS, WOULDN'T IT?

13 A INDUSTRIAL HYGIENE FOUNDATION WAS THE SAME
14 OUTFIT THAT PUBLISHED THE INDUSTRIAL HYGIENE
15 DIGEST, AND THAT CERTAINLY INCLUDED A NUMBER OF
16 ARTICLES OR SUMMARIES OF ARTICLES ABOUT
17 ASBESTOSIS AND LUNG CANCER FROM ASBESTOS.

18 Q ALL RIGHT. NOW, GO AHEAD. 399B. ANOTHER
19 LETTER ON THAT LETTERHEAD OF PITTSBURGH PLATE
20 GLASS, MAY 25, '62. COULD YOU TELL US WHAT THAT
21 IS, DOCTOR?

22 A THIS IS A COUPLE OF WEEKS AFTER THE ONE THAT
23 WE JUST SHOWED THE JURY, AND HERE ADDITIONAL
24 ARTICLES ARE ENCLOSED RELATING TO THE HAZARDS OF
25 ASBESTOS AND THE, ACCORDING TO THIS, THE LIBRARY

1 CAME THROUGH "AND I FEEL YOU NOW HAVE AMPLE
2 REFERENCE MATERIAL ABOUT ASBESTOS AND ITS
3 EFFECTS," WRITES PITTSBURGH PLATE GLASS COMPANY
4 TO THE VICE PRESIDENT OF PITTSBURGH-CORNING
5 CORPORATION.

6 Q NOW, DOCTOR, THIS IS 399H, AND IT'S APRIL
7 21, 1966. IT'S HARD TO READ, AND I'M GOING TO
8 PUT A RETYPED IN THE MACHINE SO IT WILL BE EASIER
9 TO READ. THE SAME EXHIBIT. THIS IS A MEMORANDUM
10 BY DR. LEE GRANT. CAN YOU TELL US WHO HE IS?

11 A WELL, HE WAS THE CORPORATE MEDICAL DIRECTOR
12 FOR PITTSBURGH PLATE GLASS.

13 Q WHICH OWNED HALF INTEREST IN
14 PITTSBURGH-CORNING?

15 A YES.

16 Q ALL RIGHT.

17 A WHAT HE SAYS HERE IS "DR. IRVING SELIKOFF -- "

18 Q WELL --

19 A SORRY.

20 Q GO RIGHT AHEAD.

21 A "DR. IRVING SELIKOFF, A PHYSICIAN AT THE
22 MOUNT SINAI HOSPITAL IN NEW YORK HAS MADE
23 UNWARRANTED AND UNSCIENTIFICALLY BASED CLAIMS
24 CONCERNING THE HEALTH HAZARDS ASSOCIATED WITH THE
25 USE OF ASBESTOS AND FIBERGLASS MATERIALS IN THE

1 CONSTRUCTION INDUSTRY.

2 Q NOW, JUST A MINUTE, DOCTOR. I WANT TO ASK
3 YOU A COUPLE OF THINGS ON THAT IN CONNECTION.
4 FIRST OF ALL, I THINK THE EVIDENCE IN THIS RECORD
5 SHOWS THAT THE DR. LEE GRANT IS THE CONSULTANT TO
6 THE PITTSBURGH-CORNING AS MEDICAL DIRECTOR.

7 A YES.

8 Q NOW, IT HAS BEEN SAID IN THIS COURT BY THE
9 DEFENDANTS THAT THE STUDIES OF DR. SELIKOFF WERE
10 A CLASSIC, THEY HAVE BEEN CHARACTERIZED AS
11 LANDMARK, I BELIEVE THE STATEMENT HAS BEEN MADE
12 THAT THERE WAS NO REAL INFORMATION ABOUT ASBESTOS
13 THAT WAS RELIABLE UNTIL THE STUDY OF DR. SELIKOFF
14 CAME ALONG. NOW, I'LL ASK YOU IF THIS IS THE
15 SAME DR. SELIKOFF THAT HAS BEEN REFERRED TO.

16

17 MR. CROSBY: EXCUSE ME, PLEASE, DOCTOR.
18 YOUR HONOR, THE QUESTION IS ARGUMENTATIVE IN THAT
19 THE DEFENDANTS HAVE POINTED OUT THAT IN 1984 IT
20 WAS RECOGNIZED AS A LANDMARK, NOT IN 1964, BUT
21 '84 IT WAS RECOGNIZED AS A LANDMARK, AND THIS
22 MISCHARACTERIZES THAT.

23

24 THE COURT: OVERRULED. GO AHEAD.

25

1 BY MR. BALDWIN:

2 Q THE DEFENDANT REITERATES THAT -- HE STATES
3 THAT DR. SELIKOFF'S ARTICLE IS A LANDMARK AND A
4 CLASSIC ARTICLE, THE ONLY RELIABLE ARTICLE ON
5 ASBESTOSIS BEFORE ITS TIME, AND I'LL ASK YOU IF
6 THAT IS THE SAME DR. SELIKOFF THAT'S BEING
7 REFERRED TO IN THIS LETTER?

8 A YES, THIS IS DR. IRVING J. SELIKOFF.

9 Q AT MOUNT SINAI?

10 A YES.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. BALDWIN:

2 Q AND THEY SAID HE'S MADE SOME UNWARRANTED AND
3 UNSCIENTIFICALLY BASED CLAIMS, IS THAT CORRECT?

4 A YES.

5 Q AND WHAT IS THE NEXT LANGUAGE?

6 A THEY SAY, "INDUSTRY HAS NOT ACCOMPLISHED
7 AND/OR PUBLISHED IN PLANT ENVIRONMENTAL STUDIES
8 NOR RESEARCH LABORATORY INVESTIGATIONS WHICH
9 COULD BE USED TO REFUTE DR. SELIKOFF'S CLAIMS.
10 THE JOHNS-MANVILLE CORPORATION HAS BEEN DOING
11 ENVIRONMENTAL AND MEDICAL STUDIES IN THEIR
12 ASBESTOS WORKERS." OWENS-CORNING IS ALSO
13 MENTIONED.

14 Q IS THIS EVIDENCE OF PITTSBURG-CORNING
15 JOINING THE CONSPIRACY OF SILENCE TO SHAPE AND
16 FIX THE LITERATURE, DOCTOR?

17

18 MR. COOK: YOUR HONOR, I RENEW THE
19 OBJECTION I MADE YESTERDAY CONCERNING HIS
20 EXPERTISE, IT'S ARGUMENTATIVE AND SPECULATION.

21

22 THE COURT: COUNSEL, HOW MANY TIMES DO I
23 NEED TO RULE ON IT?

24

25 MR. COOK: THIS IS THE FIRST TIME I OBJECTED T

1 YOUR HONOR. WE'RE TALKING ABOUT MY DOCUMENTS
2 NOW.

3
4 THE COURT: OVERRULED.

5
6 THE WITNESS: WELL, IT CERTAINLY SHOWS A
7 WIDE-SPREAD AWARENESS OF THE ACTIVITIES OF OTHER
8 COMPANIES IN THE INDUSTRY BY PITTSBURG-CORNING.

9
10 BY MR. BALDWIN:

11 Q READ THE NEXT PART, DOCTOR, THAT HAS BEEN
12 HIGHLIGHTED.

13 A "THERE IS CONSIDERABLE RELUCTANCE ON THE PART
14 OF A COMPANY TO PUBLISH SUCH INFORMATION
15 CONCERNING THEIR COMPANY IN THE SCIENTIFIC
16 LITERATURE, IF IT IS IDENTIFIED AS THEIR
17 COMPANY'S DATA. DR. SELIKOFF'S ACTIVITIES HAVE
18 STIMULATED AN URGENT NEED FOR INDUSTRY TO
19 CONTRIBUTE ITS EXPERIENCE TO THE SCIENTIFIC
20 LITERATURE. THIS COULD BE DONE ON AN
21 INDUSTRY-WIDE BASIS THROUGH THE INDUSTRIAL
22 HYGIENE FOUNDATION, PRESERVING THE ANONYMITY OF
23 THE PARTICIPATING COMPANIES."

24 Q SO, IS THIS A SUGGESTION BY
25 PITTSBURG-CORNING THAT THE INDUSTRIAL HYGIENE

1 FOUNDATION BE USED TO PUBLISH LITERATURE SO THAT
2 ITS NAME NOT BE USED?

3 A YES.

4 Q AND WHERE DOES THAT FIT IN YOUR CONSPIRACY
5 OF SILENCE, DOCTOR, ITEM TWO --

6 A I SUPPOSE -- WELL --

7 Q -- OR ITEM ONE?

8 A WELL, THE NAMING OF THE COMPANY WOULDN'T BE
9 SO IMPORTANT IF THEY WOULD PUBLISH THEIR
10 EXPERIENCES. THE FAILURE TO PUBLISH HAS REALLY
11 BEEN THE PROBLEM.

12 Q GO AHEAD, DOCTOR.

13 A IT WAS FELT THAT THE MOST SERIOUS EFFECT OF
14 DR. SELIKOFF'S CLAIMS HAVE BEEN ON CUSTOMER AND
15 GENERAL PUBLIC RELATIONS. THE PUBLIC WILL
16 HESITATE TO USE A PRODUCT THAT IS PURPORTED TO BE
17 ASSOCIATED WITH SERIOUS HEALTH IMPLICATIONS.

18 Q GO AHEAD.

19 A JOHNS-MANVILLE CORPORATION HAS PAID OFF ON
20 FIVE OR SIX MESOTHELIOMA CASES WHERE THEY WERE
21 ASSOCIATED WITH SIGNIFICANT PULMONARY FIBROSIS
22 AND MASSIVE DUST EXPOSURES.

23 Q SO, IS THIS DOCUMENT HERE EVIDENCE OF THE
24 FACT THAT YOU HAVE AT LEAST THREE COMPANIES, OR
25 AT LEAST REFER TO THREE COMPANIES, ACTING TO

1 CRITICIZE AND TO MINIMIZE THE REPORTS OF DR.
2 SELIKOFF ABOUT THE DANGERS OF ASBESTOS?

3 A YES. AT LEAST IN THEIR INTERNAL DOCUMENTS
4 THEY HAVE BEEN RATHER CRITICAL OF DR. SELIKOFF
5 FOR A NUMBER OF REASONS.

6 Q GO AHEAD NOW. THE NEXT, WOULD YOU READ THE
7 PERTINENT PART OF THE THIRD PAGE OF THAT DOCUMENT?

8 A THIS IS 1966, "THE REACTIVATION OF THE
9 NATIONAL INSULATION MANUFACTURERS ASSOCIATIONS
10 HEALTH AND SAFETY COMMITTEE WAS DISCUSSED WITH
11 MR. F. H. EDWARDS OF OWENS-CORNING FIBREGLAS
12 CORPORATION, AND MR. C. L. SCHECKLER OF
13 JOHNS-MANVILLE CORPORATION," WHO WILL BE THEIR
14 COMPANY'S REPRESENTATIVES ON THIS COMMITTEE.

15 "IT WAS FELT THAT OUR RESPECTIVE COMPANIES
16 WOULD BE ABLE TO CONTRIBUTE SIGNIFICANTLY BY
17 A CLOSE STUDY OF OUR OWN EXPERIENCES IN HANDLING
18 ASBESTOS AND FIBERGLASS MATERIALS.

19 Q AND IS THAT EVIDENCE OF CONSORTED ACTION
20 BETWEEN THE COMPANIES TO ACHIEVE A COMMON
21 PURPOSE?

22 A YES. IN THIS CASE IT LOOKS LIKE A GOOD
23 PURPOSE.

24 Q NEXT DOCUMENT. 399-G, COULD YOU READ THE
25 HIGHLIGHTED PORTION OF THAT, DOCTOR?

1 A THEY REFER TO CONCERNS STIMULATED BY PUBLIC
2 NEWS MEDIA ARTICLES ATTRIBUTED TO DR. SELIKOFF,
3 AND SAY, "IT IS THE OPINION OF MANY PERSONS
4 WITHIN THE SCIENTIFIC COMMUNITY THAT THE
5 STATEMENTS ATTRIBUTED TO DR. SELIKOFF ARE NOT
6 SCIENTIFICALLY SOUND."

7 Q ARE THESE THE SAME STATEMENTS THEY'RE NOW
8 CALLING CLASSIC AND LANDMARK, AND THE ONLY
9 RELIABLE STUDY PUBLISHED ON ASBESTOSIS?

10 A WELL, I HAVEN'T HEARD THAT TESTIMONY, OF
11 COURSE.

12 Q WELL, IF THEY SO CHARACTERIZED IT, WOULD
13 THAT BE IN HARMONY WITH WHAT THEY'RE SAYING HERE?

14 A IT WOULD CONTRADICT WHAT THEY'RE SAYING
15 HERE.

16 Q NEXT.

17 A THE NATIONAL INSULATION MANUFACTURERS
18 ASSOCIATION, NIMA, AT AN APRIL 12, 1966, MEETING
19 DECIDED TO ESTABLISH A HEALTH AND SAFETY
20 COMMITTEE WHICH WOULD CONSIDER APPROPRIATE
21 MEASURES TO COMBAT ADVERSE OPINIONS WITH RESPECT
22 TO THE HEALTH AND SAFETY ASPECTS OF THERMAL
23 INSULATION ASBESTOS AND MINERAL FIBER. THIS --

24 Q IS THAT AT THE VERY LEAST AN EFFORT TO SHAPE
25 THE LITERATURE AND INFLUENCE THE LITERATURE?

1 A YES.

2 Q ALL RIGHT. GO AHEAD AND FINISH YOUR
3 STATEMENT.

4 A "THIS COMMITTEE IS SCHEDULED TO MEET ON MAY
5 10, 1966, IN THE NIMA OFFICE IN NEW YORK. THE
6 INDUSTRIAL HYGIENE FOUNDATIONS RESEARCH PROPOSAL,
7 AS WELL AS THE WAYS AND MEANS OF BETTER UTILIZING
8 OUR INDUSTRY-WISE HEALTH EXPERIENCES, APPEARS TO
9 BE APPROPRIATE SUBJECTS FOR THE NIMA COMMITTEE.

10 INASMUCH AS I AM A MEMBER OF THIS COMMITTEE,
11 I WOULD LIKE AN EXPRESSION OF OPINION FROM YOU
12 CONCERNING THE DEGREE TO WHICH PITTSBURG-CORNING
13 CORPORATION IS WILLING TO FINANCIALLY SUPPORT THE
14 INDUSTRIAL HYGIENE FOUNDATION'S RESEARCH PROPOSAL
15 AND PARTICIPATE IN THE STUDIES."

16 Q SO, HERE WE HAVE DR. GRANT, THE MEDICAL
17 DIRECTOR OF PITTSBURG PLATE GLASS, WHICH OWNED
18 FIFTY PERCENT OF PITTSBURG-CORNING, AND WHO IS A
19 MEDICAL CONSULTANT FOR PITTSBURG-CORNING, ASKING
20 TO WHAT EXTENT THEY WOULD BE WILLING,
21 PITTSBURG-CORNING, WOULD BE WILLING TO FINANCE
22 THE INDUSTRIAL HYGIENE FOUNDATION THAT WE HAVE
23 TALKED ABOUT?

24 A RIGHT. TO DO --

25 Q IS THAT THE SAME ONE THAT SOME PEOPLE HAVE

1 REFERRED TO AS THE CREATURE OF INDUSTRY?

2 A YES.

3 Q NOW, DOCTOR, I BELIEVE THAT'S THE END OF THE
4 DOCUMENTS ON PITTSBURG-CORNING. BEFORE WE GET TO
5 THE BOARD, MAY I ASK YOU THIS -- I DON'T WANT TO
6 BE UNDULY REPETITIOUS, BUT I WOULD LIKE TO PUT IT
7 IN CONTEXT.

8

9 THE COURT: ARE YOU READY FOR THE LIGHTS?

10

11 MR. BALDWIN: YEAH, THAT WOULD BE ALL RIGHT.

12

13 BY MR. BALDWIN:

14 Q I WOULD LIKE TO PUT IT IN CONTEXT, THE
15 TESTIMONY OF DR. GAZE, SO COULD YOU JUST TELL US --
16 MR. HOUSTON HAS READ A SUMMARY, SO LET'S NOT BE
17 REPETITIOUS, JUST HIT THE HIGHLIGHTS OF WHAT DR.
18 GAZE HAS SAID AS IT RELATES TO PITTSBURG-CORNING
19 SO WE'LL HAVE IT IN CONTEXT.

20

21 MR. COOK: YOUR HONOR, I OBJECT TO HIS
22 TESTIMONY ABOUT THE DEPOSITION TESTIMONY OF DR.
23 GAZE. IT IS DOUBLE HEARSAY, IT IS REPETITIOUS,
24 HE HAS NOT BEEN SHOWN TO BE COMPETENT AS AN
25 EXPERT ON DEPOSITION READING AND INTERPRETATION.

1 I WOULD HAVE A 703 OBJECTION AS WELL, YOUR HONOR.
2

3 THE COURT: OVERRULED.
4

5 THE WITNESS: "DR. GAZE, WHO WAS CHIEF
6 SCIENTIST WITH CAPE ASBESTOS, THE SUPPLIER OF THE
7 ASBESTOS USED BY PITTSBURG-CORNING, HAS TESTIFIED
8 THAT BETWEEN THE YEARS 1961 AND 1971 HE WAS
9 CONTINUOUSLY ADVISING THE OFFICIALS OF THE
10 PITTSBURG-CORNING CORPORATION ABOUT THE HAZARDS
11 OF ASBESTOS, WHICH HIS COMPANY WAS SUPPLYING TO THE
12 AS A RAW MATERIAL, AND THAT HE EVEN FLEW A COUPLE
13 OF THESE GUYS UP TO SEE A PLANT WHERE INSULATION
14 WAS BEING MADE WITH CAPE ASBESTOS, IN A WAY
15 WHICH DR. GAZE FELT WAS PROPER FROM AN
16 INDUSTRIAL HYGIENE DESIGN STANDPOINT. AND THAT
17 WAS AT THE BEGINNING OF PITTSBURG-CORNING'S ENTRY
18 INTO THE INSULATION MANUFACTURING BUSINESS IN
19 1961 OR '62."

20 Q AND I BELIEVE THAT THE SUMMARY WAS THAT HE
21 TOLD THEM EACH YEAR THEREAFTER ABOUT THE HAZARDS
22 OF ASBESTOSIS?

23 A YES. DR. GAZE SO TESTIFIED.

24 Q NOW, WOULD YOU SUMMARIZE THEN THIS CHART
25 THAT WE'VE PREPARED TO HIT THE HIGHLIGHTS OF YOUR

1 TESTIMONY FOR ILLUSTRATIVE PURPOSES, PLEASE, SIR?

2 A OKAY. WELL, THE FIRST ITEM IS DR. GAZE,
3 WHOM I'VE JUST GONE OVER, THE SECOND IS THE TWO
4 LETTERS IN 1962, ATTACHING DOCUMENTS RELATING TO
5 THE HEALTH HAZARDS OF ASBESTOS PROVIDED BY
6 PITTSBURG PLATE GLASS TO PITTSBURG-CORNING. THE
7 THIRD ITEM IS THE PARTICIPATION OF
8 PITTSBURG-CORNING IN NIMA, THE NATIONAL
9 INSULATION MANUFACTURERS ASSOCIATION, WHERE IN
10 1960 THE IDEA OF A HEALTH COMMITTEE WAS CONSIDERED
11 AND REJECTED, AND THE SAME HEALTH COMMITTEE
12 APPARENTLY BEING ESTABLISHED IN 1966 ACCORDING TO
13 THE DOCUMENTS WE'VE JUST SEEN, AND IN 1964 THE
14 WARNING LABELS USED ON THE JOHNS-MANVILLE CARTONS
15 OF INSULATION BEING QUOTED VERBATIM IN THE TRADE
16 ASSOCIATION'S MINUTES, IN WHICH PITTSBURG-CORNING
17 WAS A PARTICIPANT.

18 AND IN 1966 THE INTERNAL DOCUMENTS VERY
19 STRONGLY ATTACKING DR. SELIKOFF'S WORK, AND
20 DESCRIBING THE NEED TO POSSIBLY ORGANIZE SOME
21 KIND OF DEFENSIVE RESEARCH TO GET PUBLISHED IN
22 THE LITERATURE AND COUNTER THE ADVERSE PUBLICITY
23 CREATED BY SELIKOFF'S ACTIVITIES.

24 Q DOCTOR, DO YOU HAVE ANY EVIDENCE, ANY
25 DOCUMENTATION WHATSOEVER, THAT PITTSBURG-CORNING

1 AT ANY TIME MADE ANY EFFORT TO TEST ITS OWN
2 PRODUCTS TO DETERMINE THE DUST LEVELS THAT MIGHT
3 BE GENERATED WHEN IT WAS SAWED, OR CUT, OR USED
4 BY -- AS IT WOULD BE USED BY AN INSULATOR OR AN
5 END PRODUCT USER?

6 A NO, I'VE NEVER SEEN ANY DOCUMENTATION TO THE
7 EFFECT THAT THIS COMPANY EITHER TESTED THESE
8 PRODUCTS AS DESCRIBED BY MR. BALDWIN, OR PUT
9 WARNING LABELS ON THEM.

10 Q THAT WAS GOING TO BE MY NEXT QUESTION, THEY
11 DID -- THEY WERE A PARTICIPANT IN NIMA I BELIEVE
12 YOU SAID?

13 A YES.

14 Q AND THE NIMA RECORDS CLEARLY REFLECT THE
15 J.M. WARNING LABELS IN 1964?

16 A YES.

17 Q AND IS IT YOUR TESTIMONY THAT YOU HAVE SEEN
18 NO EVIDENCE OR DOCUMENTATION, OR EVIDENCE OF ANY
19 NATURE, THAT THEY AT ANY TIME EVER PLACED ANY
20 WARNING OR CAUTION LABELS ON THEIR PRODUCTS?

21 A I'VE SEEN OCCASIONAL ANSWERS TO
22 INTERROGATORIES TO THAT EFFECT, BUT I'VE NEVER
23 SEEN ANY CORPORATE DOCUMENTS WHICH WOULD SUPPORT
24 THOSE ANSWERS TO INTERROGATORIES.

25 Q THAT THEY LABELED THEIR PRODUCTS?

1 A THAT THEY LABELED THEIR PRODUCTS. AND THE
2 ANSWERS TO INTERROGATORIES, I BELIEVE, SAID THAT
3 THEY LABELED THE PRODUCTS IN 1986.

4 SO, THAT WAS THE COMPANY'S OWN VERSION OF
5 WHEN IT PUT WARNING LABELS ON ITS PRODUCTS. AND
6 I HAVEN'T SEEN ANYTHING TO CORROBORATE THAT
7 CLAIM.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q DOCTOR, TO PUT IT IN A SHORTHAND RENDITION
2 OR A SHORTHAND FASHION, DO YOU HAVE AN OPINION AS
3 TO WHETHER OR NOT PITTSBURGH-CORNING ACTED IN
4 CONCERT WITH OTHER MEMBERS OF THE INDUSTRY FOR A
5 COMMON PURPOSE?

6 A I DO.

7 Q WHAT IS YOUR OPINION?

8 A THEY DID.

9 Q AND, DOCTOR, DO YOU HAVE AN OPINION AS TO
10 WHETHER OR NOT PITTSBURGH-CORNING JOINED IN THE
11 CONSPIRACY OF SILENCE THAT THE OTHER MEMBERS OF
12 THE INDUSTRY PARTICIPATED IN?

13 A YES, I DO.

14 Q AND WHAT IS THAT OPINION?

15 A YES, THEY DID JOIN THIS CONSPIRACY OF
16 SILENCE.

17 Q WHAT ELEMENTS OF YOUR CONSPIRACY OF SILENCE
18 DID THEY PARTICIPATE IN?

19 A MAINLY A COVER-UP. I DON'T KNOW THAT THERE
20 WAS EVER ANY INDUSTRY STUDY THAT, DONE BY THE
21 INDUSTRIAL HYGIENE FOUNDATION THAT ACTUALLY DID
22 PUBLISH THE INDUSTRIES' EXPERIENCES WITH RESPECT
23 TO THE HAZARDS OF INSULATION PRODUCTS, AT LEAST
24 TO PRODUCT USERS. THE INDUSTRY DID EVENTUALLY
25 START CONTRIBUTING MONEY TO DR. SELIFOFF'S

1 LABORATORY. PERHAPS THIS WAS THE WAY IT WAS
2 ULTIMATELY DONE.

3 Q AND DID THEY PARTICIPATE IN PROTECTING THE
4 INDUSTRY --

5 A YES.

6 Q -- PRESERVING IT?

7 A YES, THEY DID.

8 Q NEXT, KEENE CORPORATION. BEFORE WE TURN THE
9 LIGHTS OUT, DOCTOR, I WISH YOU WOULD LOOK AT THIS
10 EXHIBIT HERE, PLAINTIFFS' EXHIBIT NUMBER 397G,
11 AND TELL US WHAT IT IS.

12 A THESE ARE EXCERPTS FROM MOODY'S INDUSTRIAL
13 MANUAL, WHICH IS A RELIABLE SOURCE OF INFORMATION
14 ON HISTORY OF CORPORATIONS, HISTORY OF
15 ACQUISITIONS AND SALES OF WHEN THEY'RE BUYING AND
16 SELLING COMPANIES AND DIVISIONS AND THINGS LIKE
17 THAT.

18 Q IS THAT A RECOGNIZED TREATISE IN THAT REGARD?

19 A YES, IT IS.

20 Q SOMETHING THAT YOU WOULD RELY UPON?

21 A YES. IT'S PUBLISHED BY MOODY'S INVESTOR'S
22 SERVICE, A COMPANY OF THE DUNN AND BRADSTREET
23 CORPORATION.

24 Q COULD YOU LOOK AT THAT AND BRIEFLY TELL THE
25 JURY, OUTLINE FOR THE JURY THE CORPORATE HISTORY

1 OF THE KEENE CORPORATION?

2 A WELL, THE KEENE CORPORATION --

3

4 MR. WEBER: YOUR HONOR, I JUST HAVE A BEST
5 EVIDENCE OBJECTION PLUS THE OTHER OBJECTIONS I
6 HAVE MADE.

7

8 THE COURT: OVERRULED.

9

10 THE WITNESS: -- IN 1968 AQUIRED
11 NINETY-EIGHT PERCENT OF THE OUTSTANDING CAPITAL
12 STOCK OF BALDWIN-EHERT-HILL, INCORPORATED AND IT
13 SAYS SUBSEQUENTLY SOLD, AND PREVIOUS TO THAT,
14 BALDWIN-EHERT-HILL'S HISTORY IS GIVEN, OR -- THIS
15 IS BALDWIN-HILL. WE DON'T HAVE
16 BALDWIN-EHERT-HILL. IT JUST TALKS ABOUT
17 BALDWIN-HILL AS A MANUFACTURER INCORPORATED IN
18 1935. SO, IT WAS BALDWIN-HILL, THEN BALDWIN-HILL
19 AND EHERT MAGNESIA BECAME BALDWIN-EHERT-HILL SOME
20 TIME AFTER 1935, AND THEN BALDWIN-EHERT-HILL WAS
21 ABSORBED BY THE KEENE CORPORATION.

22

23 THE COURT: MR. WEBER, AS I UNDERSTAND IT,
24 THAT INFORMATION IS NOT CONTESTED, IS IT?

25

1 MR. WEBER: NO, SIR. EXCEPT THAT I WOULD
2 OBJECT TO THE LAST CONCLUSION AS IT WAS ABSORBED
3 BY KEENE CORPORATION. WE DON'T CONTEST THAT THEY
4 ACQUIRED NINETY-EIGHT PERCENT OF THE STOCK IN
5 1968 --

6

7 MR. HOUSTON: IT'S ALREADY IN EVIDENCE,
8 OTHERWISE, FROM YOUR INTERROGATORIES.

9

10 MR. WEBER: YES, THAT'S NO PROBLEM. YOUR
11 HONOR, WE WOULD OBJECT TO SIDEBAR REMARKS MADE BY
12 COUNSEL --

13

14 THE COURT: SUSTAINED.

15

16 MR. WEBER: -- THAT MIGHT BE HEARD BY THE
17 JURY, AND WE REQUEST THAT HE REFRAIN FROM IT --

18

19 THE COURT: THE REQUEST IS GRANTED.

20

21 BY MR. BALDWIN:

22 Q DR. CASTLEMAN, I'VE HANDED YOU THE
23 PLAINTIFFS' EXHIBIT NUMBER ONE.

24 A 399H.

25 Q AND IS THAT AGAIN THE ASBESTOS MAGAZINE 1930

1 THAT WE DON'T NEED TO PUT BACK IN THE MACHINE?

2 A YES. RIGHT.

3 Q AND DID NOT KEENE ADVERTISE IN THAT ISSUE OF
4 THAT MAGAZINE OR ONE OF ITS SUCCESSORS?

5 PREDECESSORS IS A BETTER WORD FOR IT.

6 A YES. AS --

7 Q IF SO, WHICH?

8

9 MR. WEBER: YOUR HONOR, MAY I MAKE MY
10 OBJECTION, AND THESE OBJECTIONS WILL GO TO THIS
11 EXHIBIT PLUS THE ONE OR TWO OF THE OTHERS THAT I
12 ANTICIPATE. SO, LET ME DO SO. WE WOULD MAKE A,
13 FIRST OF ALL, A MATERIALITY OBJECTION BECAUSE THE
14 ISSUE HERE IS NOT WHEN THE PEOPLE IN THE ASBESTOS
15 BUSINESS KNEW THAT ASBESTOS CAUSES ASBESTOSIS,
16 WHICH IS WHAT IS ADDRESSED IN THIS ASBESTOS
17 MAGAZINE, BUT RATHER WHEN THE ASBESTOS COMPANIES
18 KNEW OR SHOULD HAVE KNOWN THAT END USERS OF
19 INSULATION --

20

21 MR. HOUSTON: EXCUSE ME.

22

23 MR. WEBER: -- CONTAINING ASBESTOS PRODUCTS
24 WERE AT UNUSUAL RISK --

25

1 MR. HOUSTON: EXCUSE ME.

2

3 MR. WEBER: -- OF HAZARD --

4

5 THE COURT: MR. WEBER, JUST A MINUTE. HE
6 ASKED YOU.

7

8 MR. HOUSTON: YOUR HONOR, NOW, THIS IS
9 CLEARLY A SPEECH MAKING ON THE PART OF COUNSEL IN
10 THE GUISE OF AN OBJECTION. I OBJECT TO IT. IT'S
11 BEEN DONE TOO MANY TIMES, AND THIS IS CLEARLY
12 SPEECH MAKING AND AN OBVIOUS ATTEMPT TO INTERRUPT
13 THE PLAINTIFFS' PRESENTATION OF EVIDENCE, AND I
14 OBJECT TO IT.

15

16 THE COURT: I THINK, GENTLEMEN, THE JURY
17 UNDERSTANDS VERY WELL BOTH SIDES' POSITION ON THE
18 QUESTION AND WILL HAVE TO MAKE A DECISION AT THE
19 APPROPRIATE TIME.

20

21 MR. WEBER: IN ADDITION, YOUR HONOR, I HAVE
22 A 102 RULE OBJECTION. I KNOW THE COURT IS
23 FAMILIAR WITH THAT RULE. I HAVE AN OBJECTION
24 UNDER RULE 403, NOT BASED ON PERSONAL KNOWLEDGE,
25 AN OBJECTION UNDER 703, WHICH IS THE PREJUDICIAL

1 VALUE OUTWEIGHS ANY PROBATIVE VALUE IT MIGHT
2 HAVE, AND A 602 OBJECTION, AND THOSE OBJECTIONS I
3 BELIEVE ARE THE ONES I WISH TO URGE.

4

5 THE COURT: ALL RIGHT. OVERRULED.

6

7 BY MR. BALDWIN:

8 Q WHERE WERE WE?

9 A WELL, WE WERE UP TO THE ARTICLE ON
10 ASBESTOSIS AND THE ADVERTISEMENT.

11 Q YES, SIR. YOU WERE ABOUT TO TELL US WHAT
12 THE ADVERTISEMENT IN THAT MAGAZINE IS.

13 A WELL, EVERY MONTH OF THAT YEAR
14 EHERT-MAGNESIA HAD AN ADVERTISEMENT ON THE INSIDE
15 BACK COVER OF THE ASBESTOS MAGAZINE JUST
16 PICTURING THESE VARIOUS PIPE COVERING AND BLOCK
17 INSULATION MATERIALS.

18 Q WITHOUT REITERATING, WAS THAT THE SAME
19 MAGAZINE THAT CARRIED THE ARTICLE ABOUT THE
20 HAZARDS OF ASBESTOS AND ASBESTOSIS?

21 A YES.

22 Q NOW, WERE OR NOT, DOCTOR, THERE SOME
23 WORKMANS' COMPENSATION CLAIMS IN CONNECTION WITH
24 KEENE?

25 A NOT THAT I'VE SEEN. THIS IS SOMETHING ELSE.

1 Q OKAY. I'M SORRY. I'M GOING TO ASK YOU
2 ABOUT THOSE DOCUMENTS I JUST HANDED YOU AND ASK
3 YOU IF YOU COULD SUMMARIZE THEM FOR THE JURY, NOT
4 PUT EVERYTHING IN THEM, BUT JUST TELL THEM HOW
5 THEY RELATE TO THE KEENE CORPORATION WITHOUT
6 HAVING TO TURN OUT THE LIGHTS.

7 A ONE OF THESE IS A DEPOSITION OF DWIGHT LORD
8 SATTERWAITE, WHO TESTIFIES IN HERE THAT HE WAS
9 HIRED AS A CLERICAL WORKER BY KEENE, OR RATHER BY
10 EHERT-MAGNESIA IN 1936, AND WITHIN A MONTH OF
11 COMING TO WORK THERE HE WAS APPRISED OF THE FACT
12 THAT THERE WAS A HAZARD OF BREATHING ASBESTOS
13 DUST. THE OTHER IS A DEPOSITION --

14 Q WOULD YOU REFER TO THE NUMBER, PLEASE?

15 A THE NUMBER OF THIS EXHIBIT -- THE FIRST ONE,
16 SATTERWAITE, WAS 397E. 397F IS A DEPOSITION OF A
17 MAN NAMED MCALLISTER. MR. MCALLISTER WAS A
18 CHEMIST WHO HAD WORKED WITH OWENS-ILLINOIS, AND
19 IN 1952 HE WAS HIRED BY THE EHERT-MAGNESIA
20 COMPANY TO DEVELOP A CALICUMSILICATE INSULATION
21 TO COMPLEMENT THEIR LINE OF INSULATIONS, WHICH
22 WERE MAGNESIA INSULATIONS UP UNTIL THAT TIME, AND
23 HE SPENT THE PERIOD 1952 TO 1960 TRYING TO
24 DEVELOP AT A PILOT PLANT AND EVENTUALLY TRIED TO
25 COMMERCIALIZE THE PRODUCTION OF A CALCIUMSILICATE

1 ASBESTOS-CONTAINING INSULATION PRODUCT FOR
2 EHERT-MAGNESIA, AND HE DESCRIBES GOING SHOPPING
3 FOR RESPIRATORS, WARNING THE WORKERS ABOUT THE
4 HAZARDS OF ASBESTOS, AND INSTALLING VENTILATION
5 CONTROLS IN THE PILOT PLANT, AND THINGS OF THAT
6 SORT TO PROTECT THEM FROM THE HAZARDS OF ASBESTOS
7 IN THE MANUFACTURER OF THESE INSULATION PRODUCTS
8 HE WAS DEVELOPING.

9 Q NEXT EXHIBIT IS 397C. NOW, JUST TELL US
10 WHAT THAT IS, DOCTOR.

11 A THIS IS A PATENT GRANTED TO BALDWIN-HILL
12 COMPANY BY THE U. S. PATENT OFFICE IN 1953 --

13 Q AND ARE --

14 A -- FOR AN INSULATING MATERIAL.

15 Q ARE THESE DOCUMENTS A MATTER OF PUBLIC
16 RECORD?

17 A YES.

18 Q WHICH MEANS THEY'RE AVAILABLE TO ANYONE WHO
19 WISHED TO GO TO THE PATENT OFFICE AND MAKE A
20 SEARCH FOR THE DOCUMENT?

21 A YES.

22 Q AND WHAT IS THE SIGNIFICANCE OF THIS PATENT?

23 A WELL, THE PATENT ELSEWHERE IN THIS PAGE
24 TALKS ABOUT THE DUST FROM INSULATION MATERIALS.

25

1 MR. WEBER: YOUR HONOR, I WOULD OBJECT.

2 HE'S INJECTING UTILITY INTO THE CASE, AND --

3

4 THE COURT: OVERRULED.

5

6 BY MR. BALDWIN:

7 Q DOCTOR, WITHOUT TRYING TO PUT EVERYBODY'S
8 EYES OUT READING THIS SMALL PRINT, COULD YOU JUST
9 SUMMARIZE THAT PATENT AS IT RELATES TO THIS CASE?

10 A THE INVENTION CLAIMED IN THIS PATENT IS ONE
11 FOR AN INSULATION MATERIAL THAT IS VERY LOW IN
12 THE DUST FORMED IN THE COURSE OF ITS HANDLING,
13 AND IT SAYS, "THEREFORE, IT CONTAINS LESS OF AN
14 INDUSTRIAL HEALTH HAZARD."

15 Q ALL RIGHT, SIR. AND THERE'S ANOTHER PATENT.
16 AND GIVE THE EXHIBIT NUMBER AND THE DATE, IF YOU
17 WOULD.

18 A YES. THIS ONE IS 397-B.

19 Q AND WHO TO?

20 A AND THIS WAS ALSO GRANTED TO -- ASSIGNED TO
21 BALDWIN-HILL COMPANY. THIS WAS IN 1956, AND THE
22 SAME LANGUAGE APPEARS. THE PRODUCT IS
23 CHARACTERIZED BY IT'S EASE OF HANDLING, AND MAY
24 BE UTILIZED WITH A MINIMUM OF DUSTING AND
25 BREAKAGE, AND THEREFORE WITH PRACTICALLY NO

1 INDUSTRIAL HEALTH HAZARD.

2 Q SO, WHAT WERE THEY DESCRIBING THERE?

3 A A HEALTH HAZARD ASSOCIATED WITH THE DUST
4 FROM THERMAL INSULATION MATERIALS.

5 Q SO, THAT WOULD BE KNOWLEDGE TO THEM OF SUCH
6 A HAZARD, WOULD IT NOT, BACK IN THE '50'S, OR THE
7 DATE OF --

8
9 MR. WEBER: YOUR HONOR, IF THE COURT PLEASE,
10 THE DOCUMENT SPEAKS FOR ITSELF.

11
12 THE COURT: OVERRULED.

13
14 BY MR. BALDWIN:

15 Q WELL, LET ME PUT IT THIS WAY, THE PATENT WAS
16 ISSUED TO WHOM?

17 A BALDWIN-HILL COMPANY.

18 Q AND AGAIN, THE MINUTES OF NIMA, WITHOUT
19 GOING BACK OVER THEM, WAS BALDWIN-EHRET-HILL A
20 MEMBER OF THAT ORGANIZATION?

21 A YES.

22 Q AND THAT WAS THE ORGANIZATION THAT FIRST
23 PROPOSED A HEALTH PROGRAM AND THEN REJECTED IT?

24 A IN 1960.

25 Q AND THEN IN 1964 THEY HAD THE DOCUMENT

1 RELATING TO THE JOHNS-MANVILLE LABEL, IS THAT
2 CORRECT?

3 A YES.

4
5 MR. WEBER: YOUR HONOR, THE OBJECTION TO
6 THAT TESTIMONY IS, THERE'S BEEN NO IDENTIFICATION
7 AS FOR WHOM THE HEALTH PROGRAM WAS INTENDED, AND
8 TO WHOM IT WAS DIRECTED, OR FOR CLASS OF PERSONS
9 WHO WERE SOUGHT TO BE PROTECTED BY IT. AND IN
10 VIEW OF THAT, IT'S NOT SHOWN TO BE MATERIAL OR
11 RELEVANT TO THE ISSUES HERE BEFORE THIS JURY.

12
13 THE COURT: I THINK YOUR OBJECTION GOES TO
14 WEIGHT.

15
16 MR. WEBER: ALL RIGHT, SIR.

17
18 BY MR. BALDWIN:

19 Q ARE YOU AWARE OF THE TYPE HEALTH PROGRAM
20 THAT THEY WERE DESCRIBING AT THAT MEETING?

21 A I CAN ONLY GO BY WHAT THE DOCUMENT ITSELF
22 SAYS.

23 Q WHAT DOES IT SAY?

24 Q IT SAYS THEY WERE CONSIDERING ESTABLISHING A
25 HEALTH PROGRAM, THE INDUSTRY WAS, AND

1 SUBSEQUENTLY REJECTED THE IDEA OF HAVING A HEALTH
2 PROGRAM.

3 Q NOW, THIS CHART ON KEENE, COULD YOU
4 CAPSULIZE YOUR TESTIMONY ABOUT KEENE BY THE USE
5 OF THAT CHART, SIR?

6 A YES.

7 Q WOULD YOU DO THAT, PLEASE, VERY QUICKLY?

8 A ONCE AGAIN, WE HAVE THE 1930 ASBESTOS
9 MAGAZINE WITH THE ARTICLE ON ASBESTOSIS,
10 PUBLISHED BEFORE SUMNER SIMPSON AND VANDIVER
11 BROWN CENSORED ALL FURTHER MENTION OF ASBESTOSIS
12 FROM ASBESTOS MAGAZINE, AND THIS IS ACCCOMPANIED
13 BY A FULL PAGE ADVERTISEMENT OF EHRET MAGNESIA
14 FOR INSULATION PRODUCTS USING ASBESTOS.

15 THE NEXT ITEMS ARE THE TESTIMONIES, THE
16 DEPOSITIONS OF MR. SATTERWAITE, THE OFFICE
17 WORKER, AND MR. MCALLISTER, THE CHEMIST, WHO SAID
18 THEY WERE AWARE OF THE HAZARDS OF ASBESTOS, OR
19 THAT ASBESTOS WAS A HAZARDOUS DUST IN 1936 AND IN
20 THE 1950'S, RESPECTIVELY, MR. MCALLISTER
21 PROVIDING CONSIDERABLY MORE DETAIL ABOUT THE
22 MEASURES THAT HE TOOK AS A MANAGEMENT PERSON, AS
23 A CHEMIST, AND AS SOMEONE WHO WAS A PARTICIPANT
24 IN THE DEVELOPMENT OF THE PRODUCT, TO SAFEGUARD
25 EMPLOYEES FROM THE ASBESTOS HAZARD IN THE PROCESS

1 THERE.

2 AND THEN IN 1960 THE NIMA HEALTH PROGRAM
3 IDEA BEING RAISED AND REJECTED, BOTH IN THE YEAR
4 1960, AND IN 1964, THE JOHNS-MANVILLE WARNING
5 LABEL APPEARING VERBATIM IN THE MINUTES OF THE
6 NATIONAL INSULATION MANUFACTURERS ASSOCIATION, IN
7 WHICH THE COMPANY WAS A PARTICIPANT.

8 Q THANK YOU. I THINK YOU FAILED TO MENTION
9 THE PATENTS.

10 A YES. I'M SORRY. THE PATENTS OF THIS
11 COMPANY IN THE 1950'S ALSO ALLUDE TO AN
12 INDUSTRIAL HEALTH HAZARD ASSOCIATED WITH THE DUST
13 FROM INSULATION MATERIALS.

14 Q SO, DOCTOR, BASED ON THE EVIDENCE THAT
15 YOU'VE GATHERED IN CONNECTION WITH KEENE
16 CORPORATION AND ITS PREDECESSORS, DO YOU HAVE ANY
17 EVIDENCE THAT ANY OF THOSE COMPANIES AT ANY TIME
18 TESTED THEIR OWN PRODUCTS TO DETERMINE WHAT DUST
19 LEVELS THEY MIGHT GENERATE IF USED BY A WORKER OR
20 AN END PRODUCT USER?

21 A I'VE NEVER SEEN ANY REPORTS. THEY, AT LEAST
22 FROM A VISUAL STANDPOINT, FELT THAT ONE OF THESE
23 PATENTED PRODUCTS WAS LESS DUSTY THAN OTHERS.
24 BUT I HAVE NEVER SEEN ANY QUANTITATIVE
25 MEASUREMENTS OF IT ASSOCIATED WITH THE HANDLING

1 OF THEIR PRODUCTS.

2 Q DOCTOR, DO YOU HAVE AN OPINION AS TO WHETHER
3 OR NOT THE KEENE CORPORATION AND ITS PREDECESSORS
4 HAD KNOWLEDGE OF THE DANGERS OF ASBESTOS AND
5 ASBESTOSIS AS A DANGEROUS DISEASE, ASBESTOS AS A
6 DANGEROUS PRODUCT, GOING BACK TO THE 1930'S?

7 A I DO.

8 Q WHAT IS THAT OPINION?

9 A MY OPINION IS THAT THEY CERTAINLY DID KNOW.

10

11 MR. WEBER: SAME OBJECTION, YOUR HONOR.

12

13 THE COURT: NOTED. WE'LL BREAK FOR LUNCH.
14 RESUME THE TESTIMONY AT 1:30.

15

16 THE MARSHAL: ALL RISE.

17

18 (WHEREUPON, THE PROCEEDINGS WERE IN RECESS
19 FROM 11:50 A.M., UNTIL 1:30 P.M., AT WHICH TIME
20 THE FOLLOWING OCCURRED:)

21

22

23

24

25

1 THE MARSHAL: ALL RISE.

2

3 THE COURT: BE SEATED.

4

5 MR. BALDWIN: SHALL I CONTINUE, YOUR HONOR?

6

7 THE COURT: YES, SIR.

8

9 BY MR. BALDWIN:

10 Q LET'S TURN NOW TO THE A.T.I. MINUTES, AND
11 YOU'VE ALREADY EXPLAINED MORE THAN ONE TIME WHAT
12 THE A.T.I. IS, ASBESTOS TEXTILE INSTITUTE, AND I
13 WON'T GO BACK OVER THAT EXCEPT TO SHOW YOU THESE
14 EXHIBITS. ALL RIGHT. THIS IS PLAINTIFFS'
15 EXHIBIT 401A, AND IS IT A COPY OF THE MINUTES OF
16 THE ASBESTOS TEXTILE INSTITUTE FOR APRIL 7, 1949
17 AT A MEETING THAT WAS HELD IN CHICAGO, ILLINOIS?

18 A YES, SIR. THAT'S EXHIBIT 401A.

19 Q ALL RIGHT. AND WE HAVE SEVERAL MEMBERS OF
20 THE ASBESTOS INDUSTRY REPRESENTED?

21 A YES.

22 Q OKAY. NEXT PAGE ON THAT ONE. AND WOULD YOU
23 COMMENT ON THE -- WELL, READ THE HIGHLIGHTED
24 SECTION OF THIS PAGE TO THE SAME SET OF MINUTES.

25

1 MR. JOSEPHSON: EXCUSE ME, YOUR HONOR. OUR
2 OBJECTION WOULD GO TO THIS ONE IF THE COURT WILL
3 GIVE US A RUNNING BILL ON IT.

4

5 THE COURT: YES, SIR.

6

7 THE WITNESS: "THE SECRETARY READ EXCERPTS
8 FROM AN ARTICLE ENTITLED "CANCER IN ENVIRONMENT"
9 WRITTEN BY GRAFF CONKLIN AND PUBLISHED IN
10 SCIENTIFIC AMERICA, JANUARY 1949. IT WAS FELT
11 THAT THE INFORMATION HERE OFFERED UNJUSTIFIABLY
12 INCRIMINATED ASBESTOS AS A CARCINOGENIC MATERIAL,
13 AND IT WAS FELT THAT SOME CLARIFICATION OF THE
14 SUBJECT SHOULD BE EXTENDED."

15

16 BY MR. BALDWIN:

17 Q NOW, THIS WAS TALKING ABOUT ASBESTOS AND
18 CANCER IN 1949 AT THE MEETING OF A TRADE
19 ORGANIZATION?

20 A RIGHT. DISCUSSING A PUBLISHED ARTICLE.

21 Q NEXT EXHIBIT, 401B. IS THAT THE MINUTES OF
22 THE MEETING OF THE SAME ASBESTOS TEXTILE
23 INSTITUTE OCTOBER 6, 1954 WHERE MR. SCHEPERS WAS
24 PRESENT?

25 A YES. DR. SCHEPERS FROM THE SARANAC

1 LABORATORY HERE IS PRESENT.

2 Q AND SARANAC LABORATORY BEING THE ONE THAT
3 BOTH O.I. AND OWENS-CORNING AND OWENS-ILLINOIS AT
4 ONE TIME OR ANOTHER HIRED TO DO WORK FOR THEM?

5 A YES.

6 Q AND WHAT DOES THE BOTTOM PART SAY?

7 A "DR. SCHEPERS SHOWED SLIDES OF SPECIMENS
8 TAKEN DURING AN AUTOPSY OF AN ASBESTOSTOTIC."

9 Q NEXT PAGE. SO, THEY WERE DISCUSSING
10 ASBESTOS-RELATED DISEASES AT THAT CONFERENCE?

11 A YES.

12 Q AND COULD YOU READ THE BOTTOM PORTION OF
13 THAT?

14 A "THE ENTIRE AFTERNOON SESSION WAS SPENT IN
15 LISTENING TO THE DISCUSSION OF THE RELATIONSHIP
16 OF ASBESTOSIS TO PULMONARY CANCER BY DR.
17 SCHEPERS. A NUMBER OF SLIDES CONTAINING FACTS
18 AND FIGURES CONCERNING THE SUBJECT OF CANCER WERE
19 SHOWN. IN THE LATTER PART OF HIS DISCUSSION HE
20 MADE SOME CONCLUSIONS CONCERNING THE RELATIONSHIP
21 OF ASBESTOS TO LUNG CANCER."

22 Q THAT WAS IN 1954?

23 A YES.

24 Q AND THE NEXT HIGHLIGHTED PORTION?

25 A "THE FIRST CASE OF CANCER OF THE LUNGS DUE

1 TO ASBESTOS WAS FOUND IN ENGLAND IN 1932. THE
2 WEST GERMAN GOVERNMENT IN 1951 RECOGNIZED LUNG
3 CANCER CAUSED BY ASBESTOS. DR. SCHEPERS OF THE
4 SARANAC LABORATORIES SUGGESTED THAT PARTICLES OF
5 ASBESTOS BE INSERTED IN ANIMAL LUNGS IN ORDER
6 THAT RESEARCH BE DONE ON THIS PROBLEM, CANCER AND
7 ASBESTOS, SO THAT THE FACTS MAY BE DETERMINED TO
8 COMBAT UNJUST COMPENSATION CLAIMS. THIS PROPOSAL
9 WAS OFFERED TO THE BOARD, AND IT WAS THEIR
10 RECOMMENDANTION THAT DR. SCHEPERS BE REQUESTED TO
11 SUBMIT A PROPOSAL FOR FURTHER CONSIDERATION."

12 Q SO, HERE WE HAVE THE A.T.I. ASKING DR.
13 SCHEPERS OF SARANAC TO MAKE THEM A PROPOSAL TO DO
14 A STUDY ON THE RELATIONSHIP BETWEEN ASBESTOS AND
15 CANCER?

16 A YES.

17 Q THIS IS 1954, RIGHT?

18 A RIGHT.

19 Q EXHIBIT 401C, A MEETING OF THE SAME ASBESTOS
20 TEXTILE INSTITUTE, AIR HYGIENE COMMITTEE,
21 DECEMBER 1, 1954. COULD YOU READ THE HIGHLIGHTED
22 LANGUAGE?

23 A "THE RESEARCH PROPOSAL FROM DR. SCHEPERS
24 FOR INVESTIGATION INTO THE RELATIONSHIP OF
25 ASBESTOS AND PULMONARY CANCER IS ANTICIPATED

1 PRIOR TO OUR NEXT MEETING. ASBESTOS AS A
2 CANCER-PRODUCING AGENT IS RECEIVING INTERNATIONAL
3 ATTENTION AND AS INDICATED BY A SPEECH OF DR. W.
4 C. HUEPER OF THE NATIONAL CANCER INSTITUTE BEFORE
5 THE INTERNATIONAL ASSOCIATION OF ACCIDENT BOARDS
6 AND COMMISSIONS. IN HIS PAPER ON INDUSTRIAL
7 CARCINOGENS, DR. HUEPER REFERRED FREQUENTLY TO
8 ASBESTOS AND ALMOST ALL OF THE SLIDES USED TO
9 DEMONSTRATE PULMONARY CANCER WERE OF CASES
10 INVOLVING ASBESTOS AND CANCER."

11 Q ASBESTOSIS.

12 A "BOTH ASBESTOSIS AND CANCER. THE SUBJECT IS
13 OF CONSIDERABLE IMPORTANCE TO THE INSTITUTE
14 MEMBERS, AND THE PROPOSAL WILL BE REVIEWED IN
15 DETAIL."

16 Q NOW, THEY REFER TO SLIDES. WOULD YOU TELL
17 THE JURY WHAT THOSE SLIDES WOULD BE THAT THEY
18 WERE SHOWING?

19 A WELL, THESE COULD HAVE BEEN PATHOLOGY SLIDES
20 SEEN UNDER A MICROSCOPE AND PHOTOGRAPHED, OR THEY
21 COULD HAVE BEEN OTHER KINDS OF SLIDES PRESENTING
22 CHEST X-RAY PICTURES AND THINGS LIKE THAT.

23

24

25

1 BY MR. BALDWIN:

2 Q ALL RIGHT. AND DID THIS --

3 A IN DR. HUEPER'S CASE I THINK IT WOULD HAVE
4 BEEN JUST THE USUAL TYPE OF CAROUSEL SLIDES,
5 BECAUSE HUPER WAS MAKING SCIENTIFIC PRESENTATIONS
6 WHICH WERE LATER PUBLISHED IN THE LITERATURE.

7 Q AT THIS POINT AT LEAST THE ASBESTOS INDUSTRY
8 WAS TALKING ABOUT THE RELATIONSHIP BETWEEN
9 ASBESTOSIS AND CANCER AS BEING AN INTERNATIONAL
10 RECOGNIZED PROBLEM, WERE THEY NOT?

11 A YES, IN 1954.

12 Q ALL RIGHT. NEXT. AND THEY WERE LOOKING
13 FORWARD TO DR. SCHEPERS MAKING A REPORT ON THE
14 RELATIONSHIP BETWEEN ASBESTOS AND CANCER, IS THAT
15 RIGHT?

16 A YES.

17 Q AND THIS IS 401-D, SEPTEMBER 7, 1955. WHAT,
18 ABOUT A YEAR LATER, NOT QUITE A YEAR LATER, OF
19 THE SAME ASBESTOS TEXTILE INSTITUTE, AND WHAT IS
20 THE HIGHLIGHTING?

21 A THEY'RE TALKING ABOUT THEIR GUESTS FROM THE
22 QUEBEC ASBESTOS MINING ASSOCIATION, AND MR.
23 SALVORON, WHO WAS THE ATTORNEY FOR QUEBEC
24 ASBESTOS MINING ASSOCIATION, STATED --

25 Q SO, HERE YOU HAVE -- I'M SORRY.

1 A -- THAT THE PRESENT MAJOR HEALTH PROBLEMS OF
2 THE INDUSTRY PERTAIN TO THE RELATIONSHIP OF HEART
3 DIFFICULTIES AND CANCER TO ASBESTOS EXPOSURE.

4 Q SO, HERE YOU HAVE AN EXCHANGE OF INFORMATION
5 BETWEEN CANADA AND THE U.S. ON ASBESTOS,
6 ASBESTOS-RELATED PROBLEMS, IS THAT CORRECT?

7 A YES.

8 Q 401-E, MARCH 7, 1956, ALMOST TWO YEARS NOW
9 SINCE THE SCHEPERS STUDY WAS FIRST SUGGESTED, IS
10 THAT RIGHT?

11 A YES. A YEAR AND A HALF, SOMETHING LIKE
12 THAT.

13 Q AND THE AGENDA, "ASBESTOS AND CANCER" WAS
14 THE AGENDA FOR THE MEETING, IS THAT RIGHT?

15 A YET.

16 Q GO AHEAD AND READ THE HIGHLIGHTED.

17 A THEY TALK ABOUT HOW THE MEDICAL DIRECTOR OF
18 JOHNS-MANVILLE REQUESTED TO BE PRESENT AT THE
19 MEETING BECAUSE OF RECENT DEVELOPMENTS IN THE
20 COMPENSATION FIELD REGARDING ASBESTOSIS AND
21 CANCER.

22 "DR. SMITH INFORMED US THAT IN HIS OPINION
23 WE HAVE AN EPIDEMIC OF LUNG CANCER IN THE WORLD
24 TODAY." DOWN BELOW, "THE FINDING BY THE REFEREE
25 IN THIS CASE," THEY'RE TALKING ABOUT A

1 COMPENSATION CASE, "WAS ASBESTOS CANCER." THE
2 REFEREE IN THIS CASE QUOTED DR. HUEPER'S
3 WRITINGS.

4 THEN BELOW THAT DR. HUEPER CLAIMS "THAT
5 ASBESTOSIS CANCER CAN BE FOUND AFTER EXPOSURE TO
6 SIX MONTHS TO FORTY-TWO YEARS IN AGES OF PEOPLE
7 FROM TWENTY-FIVE TO SIXTY-FIVE YEARS." HE ALSO
8 HAS A NEW DEFINITION OF ASBESTOSIS, SUCH AS "ONE
9 PARTICLE OF ASBESTOS WITH THE PHYSICAL CONDITIONS
10 SURROUNDING IT CAN BE DIAGNOSED AS ASBESTOSIS."

11 ACCORDING TO HIM "ALL WORKERS IN THIS
12 INDUSTRY ARE SUSCEPTIBLE."

13 Q PAGE TWO OF THE SAME DOCUMENT.

14 A DR. HUEPER ALSO INFERS "THAT ASBESTOSIS
15 CANCER MAY BE DETERMINED IN AN AUTOPSY PERFORMED
16 ON PERSONS LIVING IN THE AREA OF A PLANT."

17 FURTHER DOWN, "DR. SMITH RECOMMENDS VERY
18 STRONGLY THAT THIS INSTITUTE BEGIN A STUDY OF THE
19 RELATIONSHIP OF LUNG CANCER TO ASBESTOSIS IN OUR
20 INDUSTRY. HE RECOMMENDS THAT THIS SHOULD BE DONE
21 THROUGH THE INDUSTRIAL HYGIENE FOUNDATION IN
22 PITTSBURG. DR. SMITH INDICATED THAT HE HAS NO
23 EVIDENCE THAT THERE IS NOT A RELATIONSHIP BETWEEN
24 ASBESTOSIS AND CANCER."

25 Q DR. SMITH BEING WHO?

1 A MEDICAL DIRECTOR FOR JOHNS-MANVILLE.

2 Q GO AHEAD.

3 A "DR. SMITH ALSO", RATHER, "ALSO ADVISED THAT
4 THERE IS OTHER DAMAGING INFORMATION BEING
5 CIRCULATED WRITTEN BY THE SAME DR. W. C. HUEPER,
6 WHO IS CHIEF OF THE ENVIRONMENTAL CANCER SECTION
7 OF THE NATIONAL CANCER INSTITUTE."

8 Q SO, NOW THEY'RE TALKING ABOUT A STUDY OF THE
9 RELATIONSHIP BETWEEN ASBESTOS AND CANCER NOT
10 BEING DONE BY DR. SCHEPERS OF SARANAC, BUT RATHER
11 BEING DONE BY THE INDUSTRIAL HYGIENE GROUP, WHICH
12 SOME HAVE DESCRIBED AS THE CREATURE OF INDUSTRY,
13 IS THAT RIGHT?

14 A YES.

15 Q I THINK THE NEXT ONE I HAVE A CHART. IF
16 YOU'LL TURN THE LIGHT ON, PLEASE, SIR.

17 SO, IN ANY EVENT THEY'RE LOOKING FORWARD TO
18 THE STUDY, SOME KIND OF A STUDY ON THE
19 RELATIONSHIP BETWEEN ASBESTOS AND CANCER AT THIS
20 POINT?

21 A YES.

22 Q SO, NOW WE HAVE THE MEETING OF MARCH 7,
23 1957, OF THE SAME INDUSTRIAL -- THE SAME ASBESTOS
24 TEXTILE INSTITUTE, AIR HYGIENE MANUFACTURING
25 COMMITTEE. IT SAYS, "THE FIRST ITEM FOR

1 DISCUSSION WAS THE MEMORANDUM ON PROPOSED
2 EPIDEMIOLOGICAL STUDY OF LUNG CANCER IN ASBESTOS
3 WORKERS FOR THE ASBESTOS TEXTILE INSTITUTE." IT
4 SAYS, "THIS PROPOSAL HAS BEEN UNDER DISCUSSION
5 FOR APPROXIMATELY ONE YEAR, AND THE COST OF IT
6 COULD RUN FROM SEVENTEEN THOUSAND TO THIRTY
7 THOUSAND DOLLARS. AFTER A LENGTHY DISCUSSION THE
8 PROPOSAL WAS PUT TO A VOTE, AND SIX OF THE EIGHT
9 MEMBERS OF THE COMMITTEE VOTED AGAINST THE
10 CONTINUANCE OF THE CONSIDERATION OF THE PROPOSAL.
11 IT THEREFORE WAS REJECTED FOR THE FOLLOWING
12 REASONS."

13 NOW, WHAT WERE THE REASONS, DOCTOR, THAT
14 THEY REJECTED THE STUDY THAT THEY HAD BEEN
15 TALKING ABOUT NOW FOR A YEAR AND A HALF ON THE
16 CONNECTION BETWEEN ASBESTOS AND CANCER?

17 A WELL, THEY SAY THAT, "THE QUEBEC ASBESTOS
18 MINING ASSOCIATION HAS A SIMILAR PROGRAM, AND SO
19 WE SHOULD NOT ENTER INTO A PROGRAM OF OUR OWN AS
20 THE RESULT OF THE QUAMA INVESTIGATION WILL BE
21 MADE AVAILABLE TO US UPON THE COMPLETION OF THAT
22 INVESTIGATION. TWO, THERE IS A FEELING AMONGST
23 CERTAIN MEMBERS THAT SUCH AN INVESTIGATION WOULD
24 STIR UP A HORNET'S NEST, AND PUT THE WHOLE
25 INDUSTRY UNDER SUSPICION."

1 Q STIR UP A HORNET'S NEST, IS THAT WHAT THEY
2 SAID, PUT THE WHOLE INDUSTRY UNDER SUSPICION?

3 A THAT'S WHAT THEY SAID. THEN THEY SAY THAT,
4 "WE DO NOT BELIEVE THERE'S ENOUGH EVIDENCE OF
5 CANCER NOR ASBESTOSIS -- OR CANCER AND ASBESTOSIS
6 IN THIS INDUSTRY TO WARRANT THIS SURVEY."

7 Q NOW THEN, THE NEXT DOCUMENT IS THE MINUTES
8 OF THE SAME ORGANIZATION. THE THIRD PAGE OF THE
9 MINUTES -- DO YOU WANT TO PUT THE FIRST ONE IN
10 JUST SO THEY CAN SEE WHAT WE'RE TALKING ABOUT?

11

12 MR. JOSEPHSON: EXCUSE ME. WHAT WAS THE
13 EXHIBIT NUMBER OF THE LAST ONE?

14

15 MR. BALDWIN: OF THE LAST ONE?

16

17 MR. JOSEPHSON: YEAH.

18

19 MR BALDWIN: 401-F.

20

21 MR. JOSEPHSON: 401-F?

22

23 BY MR. BALDWIN:

24 Q 401-I IS THE MINUTES OF THE MEETING OF THE
25 ASBESTOS TEXTILE INSTITUTE, FEBRUARY, 1971, IS

1 THAT CORRECT?

2 A YES.

3 Q THEN THE NEXT PAGE -- WE HAVE THE THIRD PAGE
4 OF THAT BLOWN UP HERE. OKAY. STARTING WITH "DR.
5 GOODMAN" UP NEAR THE TOP, DR. CASTLEMAN, WOULD
6 YOU READ THE PERTINENT PARTS OF THAT DOCUMENT?

7 A "DR. J. L. GOODMAN, NORTH CHARLESTON, SOUTH
8 CAROLINA, ASSOCIATED WITH RAYBESTOS-MANHATTAN,
9 INC., SPEAKING AS A MEMBER OF THE A.P.I.
10 ENVIRONMENTAL HEALTH COMMITTEE, REPORTED THAT HE
11 HAD ATTENDED A SESSION ON ASBESTOS ARRANGED BY
12 DR. IRVING J. SELIKOFF, AND THAT WAS HELD JUNE
13 15TH TO 18TH IN 1970 AT THE MOUNT SINAI SCHOOL OF
14 MEDICINE, NEW YORK CITY. IT SAID THAT HE WAS
15 SURPRISED TO FIND A GOODLY NUMBER OF
16 REPRESENTATIVES OF LABOR IN ATTENDANCE."

17 Q NOW, THAT INDICATES AGAIN AN EXCHANGE OF
18 INFORMATION WHERE YOU'VE GOT A MEETING ATTENDED
19 BY VARIOUS PEOPLE OF THE INDUSTRY, INCLUDING
20 LABOR, AND THE MEDICAL COMMUNITY --

21 A YES.

22 Q -- IS THAT TRUE?

23 A THIS IS MORE OF AN OPEN MEETING.

24 Q GO AHEAD.

25 A "DR. SELIKOFF'S STAFF MEMBERS PRESENTED A

1 PROGRAM WHICH TURNED OUT TO BE A DIATRIBE AGAINST
2 INDUSTRY. AT THE OPENING OF THE MEETING IT WAS
3 ANNOUNCED THAT THE SPRAYING OF STEEL FRAME WORK
4 WITH ASBESTOS FIBERS OF NEW BUILDINGS UNDER
5 CONSTRUCTION HAD BEEN DISCONTINUED IN NEW YORK.
6 DR. GOODMAN WAS CRITICAL OF SELIKOFF'S
7 PRESENTATION AND ACCUSATIONS AGAINST THE
8 INDUSTRY. WHEN QUESTIONS WERE DIRECTED TO
9 VARIOUS STAFF SPEAKERS DR. SELIKOFF SPOKE UP TO
10 ANSWER THE QUESTIONS, SOMETIMES QUITE RUDELY.
11 THE SECOND DAY OF THE SEMINAR WAS DEVOTED TO
12 MESOTHELIOMA, WHICH DR. GOODMAN SAID WAS A VERY
13 CONTROVERSIAL AND DEBATABLE FORM OF CANCER AS TO
14 CAUSE. HE DOES NOT AGREE WITH MANY OF DR.
15 SELIKOFF'S STATEMENTS AND/OR CONCLUSIONS ON THE
16 SUBJECT.

17 DR. GOODMAN FEELS THAT DR. SELIKOFF WAS A
18 DANGEROUS MAN, AND THE ASBESTOS INDUSTRY IS GOING
19 TO HAVE TO LEARN HOW TO COMBAT HIS TACTICS. WE
20 CAN NOT AND SHOULD NOT TAKE DR. SELIKOFF LIGHTLY,
21 AS HE HAS THE FACILITIES FOR GETTING HIS VERSION
22 OF THE FACTS WIDELY DISTRIBUTED, AND THE ONLY WAY
23 HE CAN BE REBUTTED IS BY BEING FACED WITH THE
24 OVERWHELMING WEIGHT OF OBJECTIVE, SCIENTIFIC AND
25 FACTUAL DATA.

1 WHEN HE ASKED IF SOMETHING COULD BE DONE
2 THROUGH THE AMERICAN MEDICAL ASSOCIATION TO
3 CONTROL DR. SELIKOFF, DR. GOODMAN EXPRESSED,
4 DOUBT. THERE IS A GRIEVANCE COMMITTEE OF THE
5 AMA, BUT IT IS VERY DIFFICULT TO GET IT TO ACT.
6 HE THOUGHT THAT PERHAPS PRESSURE ON THE MOUNT
7 SINAI SCHOOL OF MEDICINE MIGHT BE EFFECTIVE."

8 Q SO, IN OTHER WORDS, IS THIS THE SAME DR.
9 SELIKOFF THAT HAS BEEN DESCRIBED IN THE TESTIMONY
10 HERE BY THESE DEFENDANTS AS HAVING WRITTEN
11 ARTICLES, SERIES OF ARTICLES THAT WERE CLASSIC,
12 LANDMARK ARTICLES?

13 A I'M SURE IT IS.

14 Q HE'S FROM MOUNT SINAI, IS HE NOT?

15 A YES, SIR.

16 Q AND THEY FIRST WANT TO PUT PRESSURE ON HIM
17 BY TRYING TO GET THE AMERICAN MEDICAL ASSOCIATION
18 DOING SOMETHING ABOUT HIM FROM A GRIEVANCE
19 STANDPOINT, IS THAT ONE OF THEIR CONSIDERATIONS?

20 A YES.

21 Q AND THEY SAY, "NO, THAT WON'T WORK, SO LET'S
22 SEE IF WE CAN GET HIS JOB AT MOUNT SINAI," IS
23 THAT IN EFFECT WHAT THEY'RE SAYING HERE?

24 A WELL, THEY'RE SAYING SOMETHING THAT AMOUNTS
25 TO THAT, YES.

1 Q NOW, WOULD YOU PUT THE LAST PAGE OF THAT
2 DOCUMENT UP?

3

4 MR. JOSEPHSON: YOUR HONOR, LET ME ADD 403
5 TO THAT, BECAUSE NOT ONE SINGLE DEFENDANT IN THIS
6 CASE WAS AT ANY OF THOSE MEETINGS, AS SHOWN BY
7 THE EXHIBITS.

8

9 THE COURT: OVERRULED.

10

11 BY MR. BALDWIN:

12 Q AND NOW, ON THE LAST PAGE OF THAT SAME
13 DOCUMENT, WOULD YOU READ THE HIGHLIGHTED YELLOW?

14 A CONCLUDING HIS REMARKS, MR. SHECKLER, WHO
15 WAS FROM JOHNS-MANVILLE, SAID, "THAT WARNING
16 LABELS ON PRODUCTS WERE NOW VOLUNTARY, BUT
17 PROBABLY WOULD BECOME MANDATORY AT SOME FUTURE
18 DATE. THINKS THAT OUR INDUSTRY MUST GIVE SERIOUS
19 CONSIDERATION TO THE USE OF WARNING LABELS ON
20 ASBESTOS PRODUCTS. MENTIONED THAT COMMON LAW
21 PRODUCT LAW LIABILITY SUITS ARE PROLIFERATING IN
22 THE THERMAL INSULATION INDUSTRY. DATE THAT LABEL
23 USE BEGAN COULD INDICATE WHETHER A MANUFACTURER
24 HAD BEEN NEGLIGENT IF LAWSUIT ARISES."

25 Q IS THAT PRECISELY ONE OF THE ISSUES INVOLVED

1 IN THIS CASE, YOUR UNDERSTANDING?

2 A YES, SIR.

3 Q AND THIS WAS 1971?

4 A YES.

5 Q THANK YOU. NOW WE GO TO EAGLE-PICHER. THIS
6 FIRST DOCUMENT I JUST PUT IN -- YES. PLAINTIFFS'
7 EXHIBIT 392, AND COULD YOU TELL US -- NEXT PAGE --
8 THIS IS THE BUREAU OF MINES DOCUMENT THAT, YOU
9 WEREN'T HERE, BUT MR. HOUSTON HAS ALREADY READ TO
10 THE JURY, AND I'M NOT GOING TO REPEAT IT, EXCEPT
11 TO PUT ONE OR TWO SENTENCES OF IT INTO CONTEXT.

12 THE BUREAU OF MINES IS WRITING EAGLE-PICHER
13 BACK IN 1932 ABOUT A REPORT ON THEIR PLANTS, AND,
14 "THIS REPORT IS SUBMITTED FOR YOUR CONFIDENTIAL
15 INFORMATION"?

16 A YES.

17

18

19

20

21

22

23

24

25

1 Q NEXT ONE. AND WOULD YOU READ THE
2 HIGHLIGHTED PART OF THAT REPORT ON THIS PAGE OF
3 THE SAME REPORT, SAME EXHIBIT?

4 A "IN SEPTEMBER 1931 AT THE REQUEST OF THE
5 SAFETY ENGINEER OF THE EAGLE-PICHER MINING AND
6 SMELTING COMPANY, AN INVESTIGATION WAS MADE OF
7 THE COMPANY'S ROCK WOOL PLANT OF JOPLIN,
8 MISSOURI."

9 Q AND READING FROM THE SAME REPORT, WOULD YOU
10 READ THE CONCLUSION DRAWN?

11 A "BASED ON THE CHEMICAL ANALYSIS, QUANTITY OF
12 DUST, AND EVIDENCE OF SUCH PARABRONCHIAL
13 THICKENING IN THE MEN WHO HAD BEEN EXPOSED
14 ACCORDING TO THE HISTORIES ONLY A RELATIVE SHORT
15 PERIOD OF TIME TO THE DUST, IT IS VERY LIKELY
16 THAT THE DUST IS HARMFUL IF THE DUST IS BREATHED
17 OVER A RELATIVELY LONG PERIOD OF TIME. THIS IS
18 PARTICULARLY TRUE IN THE MIXING ROOM WHERE IT IS
19 STATED BY THE EMPLOYEES THAT ROCK WOOL IS MIXED
20 WITH ASBESTOS IN VARIOUS MIXTURES RANGING FROM
21 TEN TO SEVENTY-FIVE PERCENT. THIS IS A
22 PARTICULARLY DUSTY PLACE, AND IT IS NOW KNOWN
23 DEFINITELY THAT ASBESTOS DUST IS ONE OF THE MOST
24 DANGEROUS DUSTS TO WHICH MAN IS EXPOSED."

25 Q NOW, THEY'RE SAYING THAT IT IS KNOWN

1 DEFINITELY THAT ASBESTOS DUST IS ONE OF THE MOST
2 DANGEROUS DUSTS TO WHICH MAN IS EXPOSED IN 1932,
3 IS THAT CORRECT?

4 A YES.

5 Q AND THAT'S THE UNITED STATES GOVERNMENT
6 SAYING THAT.

7 A TO THE EAGLE-PICHER COMPANY, YES.

8 Q NEXT. PLAINTIFFS' EXHIBIT 392A, AND WHAT IS
9 THAT, DOCTOR?

10 A THIS IS AN INTERNAL MEMORANDUM OF THE
11 EAGLE-PICHER SALES COMPANY IN 1942 BY THE
12 SALESMAN H. M. ABER, AND MR. ABER REPORTS -- OH,
13 EXCUSE ME. YOU HAVEN'T ASKED WHAT IT SAYS.

14 Q THE NEXT PAGE. HE'S A SALEMAN FOR WHO?

15 A EAGLE-PICHER.

16 Q AND THIS IS 1932, YOU SAID?

17 A 1942.

18 Q EXCUSE ME. '42. ALL RIGHT. AND WHAT IS --
19 I SAW SOME REFERENCE TO THE STATE OF TEXAS, DID
20 I?

21 A YES. HE WAS IN THE OFFICES OF THE TEXAS
22 STATE BOARD OF HEALTH.

23 Q HE WAS IN THE OFFICES OF THE STATE BOARD OF
24 HEALTH?

25 A YES.

1 Q ALL RIGHT. GO AHEAD. HE SAYS -- READ THE
2 HIGHLIGHTED PARTS.

3 A HE SAID, "WHILE IN MR. WARDLOW'S OFFICE -- "

4 Q IS THAT THE ONE YOU'RE TALKING ABOUT?

5 A YES.

6 Q ALL RIGHT.

7 A " -- I HAD THE OPPORTUNITY TO READ A SECTION
8 ON OCCUPATION AND HEALTH AS COMPILED BY THE
9 INTERNATIONAL LABOR INSTITUTE ON ASBESTOS
10 COMPILED IN 1938. THIS ARTICLE WAS BY DR. S. R.
11 GLOYNE IN LONDON, ENGLAND AND DR. E. R. A.
12 MEREWETHER OF BIRMINGHAM, ENGLAND. IF YOU THINK
13 MINERAL WOOL IS DANGEROUS, YOU OUGHT TO READ
14 THIS. YOU SHOULD READ THIS." AND HE TELLS HIM
15 WHERE TO GET A COPY.

16 Q THAT WAS APRIL 8, 1942. PLAINTIFFS' EXHIBIT
17 392D. WHAT IS THAT, DOCTOR?

18 A THIS IS THE SUPPLEMENT TO THE ENCYCLOPEDIA
19 ON OCCUPATION AND HEALTH BY THE INTERNATIONAL
20 LABOR OFFICE AND THIS IS ATTACHED TO THIS PAGE AS
21 THE ARTICLE ON ASBESTOS.

22 Q ALL RIGHT. HE POINTS OUT THAT THE VARIOUS
23 COMPANIES THAT ARE REPRESENTED HERE, THIS IS A
24 WORLD WIDE REPRESENTATION THERE, IS IT NOT? NEW
25 DELI, SHANG HAI, SYDNEY, DUBLIN, TOKYO,

1 WELLINGTON, WASHINGTON D.C. --

2 A YES. THESE ARE ALL THE PLACES WHERE THIS
3 THING CAN BE ORDERED ACCORDING TO THE DOCUMENT.

4 Q VIRTUALLY ALL OVER THE WORLD?

5 A YES.

6 Q ALL RIGHT. NEXT DOCUMENT. NOW, LET ME ASK
7 YOU, IN ORDER TO GET THIS IN CONTEXT, IS THIS THE
8 PART OF THE SAME EXHIBIT WHICH IS NOW A PART OF
9 THE DOCUMENT THAT HE REFERRED WHEN HE SAYS IF YOU
10 THINK SILICOSIS IS DANGEROUS, YOU OUGHT TO READ
11 THIS? OR ROCK WOOL OR WHATEVER IT WAS HE SAID.

12 A YES. THIS IS THE DOCUMENT OF THE
13 INTERNATIONAL LABOR OFFICE ON ASBESTOS.

14 Q ALL RIGHT. GO AHEAD.

15 A WHAT GLOYNE AND MEREWETHER ARE DOING HERE IS
16 TALKING ABOUT THE COMPLICATIONS AND SEQUELA OF
17 PULMONARY ASBESTOSIS, AND THEN THEY MENTION --

18 Q WHEN YOU SAY "SEQUELA" -- THAT'S A BIG WORD
19 THAT I'M NOT SURE I UNDERSTAND.

20 A WELL, ONCE YOU HAVE ASBESTOSIS, THIS IS THE
21 SEQUAL, THIS IS WHAT CAN COME NEXT.

22 Q ALL RIGHT. GO AHEAD.

23 A AND THEY SAY BELOW "IN ADDITION TO THESE
24 FOUR MAIN COMPLICATIONS MAY BE NOTED TWO WHICH
25 ARE LESS COMMON, AND ONE OF THESE TWO IS

1 CARCINOMA."

2 Q IS CARCINOMA ANOTHER WORD FOR CANCER?

3 A YES, SIR.

4 Q ALL RIGHT, SIR. NEXT ONE.

5 A FURTHUR DISCUSSING THE EVIDENCE ON CANCER.

6 THEY SAY THAT IT'S, AT THAT TIME, THIS IS 1938,
7 THAT THE EVIDENCE WAS INCONCLUSIVE, BUT THERE IS
8 SUFFICIENT EVIDENCE TO WARRANT CAREFUL
9 OBSERVATION IN THE FUTURE. THEY GO ON TO NOTE
10 THAT FATAL CASES OF ASBESTOSIS HAVE RESULTED FROM
11 EXPOSURE AS SHORT AS TWO YEARS.

12 Q THIS IS IN '42 THEY'RE NOTICING CASES IN
13 WHICH PEOPLE WHO HAVE BEEN EXPOSED AS SHORT AS
14 TWO YEARS ARE DYING FROM ASBESTOSIS?

15 A THIS IS WHAT WAS PUBLISHED IN THE I.L.O. IN
16 1938 AND WHAT WAS OBSERVED BY THE EAGLE-PICHER
17 SALESMAN IN 1942?

18 Q SAME ARTICLE, RIGHT?

19 A YES.

20 Q WOULD YOU READ THE HIGHLIGHTED PORTION?

21 A "THE VIEW MUST ACCEPT THAT THE EXISTENCE OF
22 EVEN A MODERATE DEGREE OF ASBESTOSIS IS A SERIOUS
23 AND EVER PRESENT POTENTIAL RISK TO LIFE. SINCE A
24 WORKER WITH DEVELOPED ASBESTOSIS MAY STILL REMAIN
25 AT WORK AND BE LITTLE CONCERNED AS TO THE STATE

1 OF HIS HEALTH, THE QUESTION MAY WELL BE ASKED, IS
2 ASBESTOSIS A SERIOUS DISEASE? TO THIS QUESTION,
3 UNFORTUNATELY, THE ANSWER IS EMPHATICALLY, YES."

4 Q AND AGAIN READING FROM THE SAME ARTICLE, IS
5 THAT RIGHT?

6 A YES.

7 Q ALL RIGHT.

8 A "THE RISK OF ASBESTOSIS IN THE ASBESTOS
9 INDUSTRY IS NO LESS GRAVE THAN THE MOST SERIOUS
10 RISKS FROM SILICOSIS IN THE SILICOSIS-PRODUCING
11 INDUSTRIES. THE PREVENTIVE MEASURES NECESSARY
12 THEREFORE WILL BE EXTENSIVE AND STRINGENT."

13 Q ALL RIGHT. I THINK EARLIER I ASKED YOU THE
14 QUESTION WHAT A BIBLIOGRAPHY IS AND YOU TOLD US
15 IT WAS A LIST OF ARTICLES, AND I WOULD LIKE FOR
16 YOU TO JUST POINT OUT ON THIS EXHIBIT, WHICH IS A
17 PART OF THE SAME ARTICLE, THE BIBLIOGRAPHY. IS
18 THIS A LISTING OF THE ARTICLES THAT THE AUTHOR
19 HAS REFERRED TO IN THE BODY OF HIS PAPER?

20 A YES. OR AT LEAST THEY ARE SOURCES THAT THE
21 AUTHOR ADVISES ARE AVAILABLE FOR FURTHER DETAILED
22 INFORMATION.

23 Q AND THAT WOULD BE AVAILABLE TO THE AUTHOR OR
24 ANYBODY ELSE THAT WANTED TO READ THEM?

25 A YES. YOU JUST GO TO THE MEDICAL LIBRARY AND

1 LOOK THEM UP.

2 Q COULD YOU GET THAT IN BETTER FOCUS? AND
3 HERE HE'S REFERRING TO THE MEREWETHER STUDY OF
4 1930, ISN'T HE?

5 A YES.

6 Q AMONG OTHER ARTICLES?

7 A WELL, I MEAN, WE WOULD EXPECT DR. MEREWETHER
8 TO DO THAT, WOULDN'T WE?

9 Q NEXT, DOCTOR. WOULD YOU TURN THE LIGHTS ON
10 PLEASE, SIR? I THINK WE CAN SPEED THIS UP BY
11 JUST REFERRING TO THE NEXT THREE DOCUMENTS,
12 DOCTOR, 392E "F" AND "G" COLLECTIVELY. COULD YOU
13 TELL US WHAT THEY ARE?

14 A THESE ARE EXCERPTS FROM TEXT BOOKS THAT WERE
15 RECEIVED BY EAGLE-PICHER RESEARCH LIBRARY AND
16 HAVE STAMPS ON THEM INDICATING THE TIME OF THEIR
17 RECEIPT. ONE OF THESE IS "INDUSTRIAL DUST" BY
18 PHILIP DRINKER AND THEODORE HATCH, PUBLISHED IN
19 1936, RECEIVED IN 1938 AND THIS TALKS ABOUT --

20 Q WHICH ONE IS THAT? REFER TO THE EXHIBIT.

21 A THIS IS 392E.

22 Q WHAT DO THEY TALK ABOUT THERE?

23 A AND THEY HAVE A SECTION ON ASBESTOSIS IN
24 HERE. ,

25 Q ALL RIGHT.

1 A THEY TALK ABOUT SOME OF THE PUBLICATIONS IN
2 ENGLAND AND SO ON. 392F IS IRVING SACKS'
3 "HANDBOOK OF DANGEROUS MATERIALS" PUBLISHED IN
4 1951, RECEIVED IN 1951, TALKING ABOUT ASBESTOS
5 AND MAXIMUM ALLOWABLE CONCENTRATION, FIVE MILLION
6 PARTICLES PER CUBIC FOOT AND SOME DESCRIPTION
7 ABOUT HAZARDOUS PROPERTIES AND SO ON MENTIONING
8 THAT EXPOSURE OCCURS IN THE INSULATING AND
9 FIREPROOFING INDUSTRY AND OTHERS.

10 Q NEXT.

11 A AND THE NEXT ONE IS 392G RECEIVED IN 1953.
12 PUBLISHED 1948, RUTHERFORD JOHNSTONE'S BOOK,
13 "OCCUPATIONAL MEDICINE AND INDUSTRIAL HYGIENE"
14 AND IT'S A RATHER LENGTHY TABLE OF CONTENTS FIRST
15 AND THEN A CHAPTER THIRTY CALLED "ASBESTOSIS".
16 AND HE SAYS HERE, "OCCUPATIONAL EXPOSURE OCCURS
17 IN THOSE TRADES WHERE IT IS USED FOR PACKING,
18 INSULATING, FIREPROOFING, AND SO ON," AND IT
19 TALKS ABOUT WHAT ASBESTOSIS IS.

20 Q ALL RIGHT. NEXT DOCUMENT, PLEASE.
21 PLAINTIFFS' EXHIBIT 392B, WHICH IS VERY DIFFICULT
22 TO READ, AND WE HAVE A CLEAR COPY. OKAY. NOW,
23 IT APPEARS THAT IT'S -- JUST DESCRIBE THAT
24 DOCUMENT IF YOU WOULD, PLEASE.

25 A IT'S 1968. THIS IS A LETTER FROM THE

1 DIRECTOR OF RESEARCH AT EAGLE-PICHER INDUSTRIES
2 TO THE SHELL OIL COMPANY LOCATION IN ILLINOIS
3 REGARDING TOXIC INGREDIENTS AT EAGLE-PICHER SUPER
4 66 AND ONE COTE CEMENTS. HE SAYS, "THE ABOVE
5 EAGLE-PICHER PRODUCTS DO NOT CONTAIN ANY TOXIC
6 INGREDIENTS, THEREFORE NO ANTEDOTES ARE NEEDED."

7 Q AND THEY BOTH CONTAIN ASBESTOS, DO THEY NOT,
8 DOCTOR?

9 A THEY DO.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. BALDWIN:

2 Q PLAINTIFFS' EXHIBIT 392-C, AND THAT IS
3 DIFFICULT TO READ, WE'RE GOING TO REPLACE IT WITH
4 A LEGIBLE COPY. APRIL 6, 1965. AND DO YOU
5 RECOGNIZE THAT DOCUMENT, WHO IT'S FROM AND WHO
6 IT'S TO, DOCTOR?

7 A YES. IT'S TO SUN SHIPBUILDING AND DRYDOCK
8 COMPANY. THIS IS ANOTHER LETTER FROM
9 EAGLE-PICHER. IT SAYS, "YOUR INQUIRY REGARDING
10 THE TYPE OF INSULATING MATERIALS USED IN SHIP
11 CONSTRUCTION FROM 1920 TO THE PRESENT DATE
12 ADDRESSED TO OUR CINCINNATI OFFICE HAS BEEN
13 PASSED ON TO ME FOR CONSIDERATION. FROM THE TYPE
14 OF QUESTIONS YOU ASKED IT IS EVIDENT THAT YOU ARE
15 CONCERNED WITH THEIR POTENTIAL HEALTH HAZARDS."
16 DOWN BELOW HE SAYS, "IN ADDITION TO THE BASIC
17 FIBER OUR INSULATIONS CONTAIN MINOR AMOUNTS OF
18 CLAY, PORTLAND CEMENT, ASBESTOS FIBER, RESIN
19 BINDERS, AND THE LIKE. AGAIN, WHILE EACH OF
20 THESE ADDED INGREDIENTS COULD BE A HEALTH HAZARD
21 IF EXPOSURE WERE TO A BIG CONCENTRATION, SUCH IS
22 NOT THE CASE."

23 THEN HE SAYS, "IN COMMON WITH OTHER FORMS,
24 MANY OTHER FORMS OF THERMAL INSULATIONS, THE
25 INSULATIONS WE MANUFACTURE TEND TO BE DUSTY."

1870

1 AND THEN FURTHER DOWN HE SAYS, "BUT IN VIEW
2 OF THE ABOVE RELATIVE MINOR HAZARD POTENTIAL FOR
3 THE MATERIALS WE MANUFACTURE, WE DO NOT HAVE ANY
4 MEDICAL REPORTS RELATIVE TO THIS MATTER."

5 WHAT HE MEANS BY "THE ABOVE MINOR HAZARD"
6 IS, HE'S TALKING ABOUT SKIN REACTIONS, TALKING
7 ABOUT DERMATITIS HERE.

8 Q BUT HE'S ADMITTING THAT THEIR TYPE
9 INSULATION IS DUSTY?

10 A YES, HE IS.

11 Q THE LIGHTS NOW, PLEASE. WE'RE NOT GOING TO
12 TAKE THE TIME TO PUT THESE DOCUMENTS BACK IN THE
13 MACHINE, DOCTOR, EXCEPT TO SAY THAT I HAVE IN MY
14 HAND 402-D, "E", AND "F", WHICH ARE THE MINUTES
15 OF THE NATIONAL INSULATION MANUFACTURERS
16 ASSOCIATION MEETINGS THAT WE'VE REFERRED TO
17 PREVIOUSLY TODAY, AND ASK IF EAGLE-PICHER ISN'T
18 SHOWN AS A PARTICIPANT ON THESE DOCUMENTS?

19 A YES, EAGLE-PICHER WAS A MEMBER OF THE
20 NATIONAL INSULATION MANUFACTURERS ASSOCIATION.

21 Q AND THAT IS THE ASSOCIATION THAT FIRST
22 PROPOSED A HEALTH PROGRAM AND THEN REJECTED IT?

23 A YES, IN 1960.

24 Q AND THE SAME ORGANIZATION THAT DISCUSSED THE
25 JOHNS-MANVILLE LABELING OF THEIR PRODUCTS IN

1 1964?

2 A YES, SIR.

3 Q NOW, AGAIN DIRECTING YOUR ATTENTION TO THE
4 CHART, EAGLE-PICHER, WHICH WE'RE USING TO
5 SUMMARIZE OR CAPSULIZE YOUR TESTIMONY, DOCTOR,
6 WOULD YOU SUMMARIZE IT TO THE JURY?

7 A YES. IN 1932 THEY RECEIVED A REPORT FROM
8 THE U.S. GOVERNMENT THAT ASBESTOS WAS ONE OF THE
9 MOST DANGEROUS DUSTS TO WHICH MAN IS EXPOSED.
10 BETWEEN 1938 AND 1953 THEY RECEIVED REFERENCE
11 TEXTS AT THE RESEARCH LIBRARY REGARDING HEALTH
12 HAZARDS AND ASBESTOSIS.

13 IN 1942 THEIR SALESMEN IN TEXAS, MR. AVER,
14 POINTED OUT THE GLOYNE AND MEREWETHER PUBLICATION
15 IN THE I.L.O., SUBSUPPLEMENT TO THE ENCYCLOPEDIA
16 ON OCCUPATIONAL HEALTH.

17 Q IS THAT THE ONE THAT SAID THAT, "IF YOU
18 THINK THAT IT'S DANGEROUS, READ THIS"?

19 A YES. IN HIS MEMORANDUM HE CALLED ATTENTION
20 TO THAT.

21 IN 19 -- ACTUALLY GOING BACK IN 1936,
22 EAGLE-PICHER WAS A MEMBER OF THE INDUSTRIAL
23 HYGIENE FOUNDATION, AND RECEIVED THE INDUSTRIAL
24 HYGIENE DIGEST, AND HAD ACCESS TO THE RESOURCE OF
25 THE INDUSTRIAL HYGIENE FOUNDATION REGARDING

1872

1 HEALTH HAZARDS.

2 Q AND DID THAT DIGEST HAVE A COPY OF THE
3 ARTICLES THAT THE JOURNAL OF THE AMERICAN MEDICAL
4 ASSOCIATION PUT OUT ON THE RELATIONSHIP BETWEEN
5 ASBESTOS AND CANCER IN 1949?

6 A YES. AMONGST THE DOZENS OF ARTICLES
7 SUMMARIZED ABOUT ASBESTOS AND ASBESTOSIS AND
8 CANCER (INAUDIBLE) -- JOURNAL OF AMERICAN MEDICAL
9 ASSOCIATION EDITORIAL IN 1949.

10 IN 1960 AND 1964 EAGLE-PICHER WAS A MEMBER
11 OF THE NATIONAL INSULATION MANUFACTURERS
12 ASSOCIATION, WHERE THIS IDEA OF A HEALTH PROGRAM
13 WAS RAISED AND PROJECTED, THEN LATER ON
14 JOHNS-MANVILLE WARNING LABEL WAS QUOTED IN ITS
15 ENTIRETY.

16 IN 1965 AND 1968 LETTERS WERE SENT BY THE
17 COMPANY TO VARIOUS INDUSTRIAL CONSUMERS OF THE
18 EAGLE-PICHER INSULATION PRODUCTS TO THE EFFECT
19 THAT, AT LEAST ONE LETTER, THERE WERE NO TOXIC
20 INGREDIENTS, OR IN ANY EVENT, IF THERE WAS A
21 LITTLE ASBESTOS IN IT, IT WASN'T ENOUGH TO BE
22 ANYTHING TO CONCERN YOURSELF ABOUT.

23 Q THIS WAS IN 1968 AFTER THEY HAD BEEN TOLD
24 BACK IN 1932 THAT IT WAS ONE OF THE MOST
25 DANGEROUS DUSTS TO WHICH MAN IS EXPOSED, IS THAT

1 TRUE?

2 A YES.

3 Q THEY WERE WRITING ONE OF THEIR CUSTOMERS
4 SAYING, "THERE'S NOTHING TOXIC IN OUR PRODUCT"?

5 A YES.

6 Q AND WAS THE PRODUCT THEY WERE REFERRING TO
7 AN ASBESTOSIS-CONTAINING PRODUCT?

8 A YES.

9 Q YOU CAN TAKE YOUR SEAT, DOCTOR. DOCTOR, DO
10 YOU HAVE ANY EVIDENCE, OR HAVE YOU FOUND ANY
11 DOCUMENT OR BIT OF INFORMATION THAT INDICATES
12 THAT EAGLE-PICHER AT ANY TIME EVER TESTED ONE OF
13 ITS OWN PRODUCTS TO DETERMINE WHAT THE DUST
14 CONTENT MIGHT BE WHEN USED BY AN INSULATOR OR END
15 PRODUCT USER?

16 A I'VE NEVER SEEN ANY INDICATION THAT THE
17 COMPANY TESTED ITS PRODUCTS FOR EXPOSURE THAT A
18 PRODUCT USER WOULD SUSTAIN, NO.

19 Q AND DOCTOR, DO YOU HAVE AN OPINION BASED ON
20 YOUR INVESTIGATION AS TO WHETHER OR NOT
21 EAGLE-PICHER HAD ACTUAL KNOWLEDGE THAT ASBESTOS
22 WAS A DANGEROUS PRODUCT, THAT ASBESTOS WAS ONE OF
23 THE MOST DANGEROUS DUSTS KNOWN TO MAN, AND THAT
24 ASBESTOSIS WAS A SEVERE DISEASE GOING BACK TO THE
25 1930'S?

1 A YES.

2 Q AND WHAT IS YOUR OPINION?

3 A THAT THEY KNEW.

4 Q AND DOCTOR, I'LL ASK YOU THIS ONE QUESTION
5 RELATING TO ALL OF THE DEFENDANTS' CHARTS THAT
6 HAVE BEEN PLACED BEFORE THIS JURY UP TO NOW, DO
7 YOU HAVE AN OPINION AS TO WHETHER OR NOT IF THOSE
8 MANUFACTURERS AND/OR SELLERS WERE HELD TO THE
9 CARE AND DEGREE OF AN EXPERT IN THEIR FIELD THAT
10 THEY KNEW OR SHOULD HAVE KNOWN THAT ASBESTOS WAS
11 A DANGEROUS AND HAZARDOUS PRODUCT LONG BEFORE THE
12 '40'S?

13 A YES.

14 Q WHAT IS YOUR OPINION, SIR?

15 A MY OPINION IS THAT CERTAINLY SOMETIME BEFORE
16 1940 THEY SHOULD HAVE KNOWN THAT.

17 Q AND WITHOUT REPEATING THE QUESTION, WOULD
18 YOU HAVE AN OPINION AS TO WHETHER OR NOT THEY
19 KNEW OR SHOULD HAVE KNOWN THAT ASBESTOS WAS A
20 DANGEROUS PRODUCT BEFORE THE '50'S?

21 A YES.

22 Q AND WHAT IS THAT OPINION?

23 A WELL, THEY CERTAINLY SHOULD HAVE KNOWN THAT,
24 WHAT WITH THE LITERATURE ON CANCER FROM ASBESTOS
25 BEING ADDED TO THE LITERATURE ON ASBESTOSIS.

1 Q AND THE SAME QUESTION AS TO WHETHER OR NOT
2 THEY, BEING HELD TO THE DEGREE AND CARE OF AN
3 EXPERT IN THEIR FIELD, THEY KNEW OR SHOULD HAVE
4 KNOWN THAT ASBESTOS WAS A DANGEROUS PRODUCT
5 BEFORE THE '60'S?

6 A YES.

7 Q AND WHAT IS THAT OPINION?

8 A THAT THEY CERTAINLY KNEW.

9 Q THAT IT WAS A DANGEROUS PRODUCT?

10 A YES. ALL OF THEM KNEW.

11 Q AND MAYBE I CAN ASK ONE QUESTION INSTEAD OF
12 THREE BY ASKING YOU IF YOU HAVE AN OPINION AS TO
13 WHETHER OR NOT THESE MANUFACTURERS AND/OR
14 SELLERS, WHOSE CHARTS YOU'VE PLACED BEFORE THIS
15 JURY -- HOW MANY OF THEM IS IT, EIGHT -- WHEN
16 HELD TO THE DEGREE AND CARE OF AN EXPERT, KNEW OR
17 SHOULD HAVE KNOWN THAT ASBESTOSIS WAS A DISEASE
18 THAT WAS PROGRESSIVE, IRREVERSIBLE, INCURABLE,
19 AND TERMINAL BEFORE THE '40'S, BEFORE THE '50'S,
20 BEFORE THE '60'S?

21 A YES.

22 Q AND WHAT IS YOUR OPINION?

23 A THEY SHOULD HAVE KNOWN.

24 *

25 MR. BALDWIN: I HAVE NO FURTHER QUESTIONS,

1 YOUR HONOR.

2

3 THE COURT: WELL, MS. JENKINS, DID YOU GET
4 AN OPPORTUNITY TO EXAMINE THE EXHIBIT WE HELD IN
5 OBEDIANCE?

6

7 MR. BALDWIN: YOU HONOR, WE'RE GOING TO
8 WITHDRAW THAT.

9

10 THE COURT: YOU'RE GOING TO WITHDRAW IT?
11 OKAY. ARE YOU READY FOR CROSS-EXAMINATION?

12

13 MR. JOSEPHSON: YES, YOUR HONOR, I'M GOING
14 TO DO THE HONORS, BUT IT'S GOING TO TAKE ME A
15 MINUTE TO GET ORGANIZED.

16

17

18

19

20

21

22

23

24

25

1 Q DO YOU HAVE ANY EVIDENCE, OR DID YOU FIND
2 ANY EVIDENCE THAT POINTED TO ANY ONE OF THESE
3 MANUFACTURERS OR SELLERS WARNING OF ANY OF THE
4 DANGERS OF THEIR PRODUCTS PRIOR TO 1930, PRIOR TO
5 1940, PRIOR TO 1950, OR PRIOR TO 1960?

6 A NO.

7 Q DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
8 THEY ISSUED SUCH A WARNING PRIOR TO 1930, PRIOR
9 TO 1940, PRIOR TO 1950, AND PRIOR TO 1960?

10 A YES, I DO.

11 Q AND WHAT'S YOUR OPINION?

12 A THAT THEY DID NOT.

13
14 MR. BALDWIN: THANK YOU.

15
16 THE COURT: MR. CROSBY, WHY DON'T YOU
17 STRAIGHTEN IT UP SO COUNSEL CAN MOVE A LITTLE
18 BETTER?

19
20 MR. JOSEPHSON: MAY I PROCEED, YOUR HONOR?

21
22 THE COURT: YES.

23
24 CROSS-EXAMINATION BY MR. JOSEPHSON:

25 Q GOOD AFTERNOON, DR. CASTLEMAN.

1 A GOOD AFTERNOON.

2 Q I'M FRANKLY NOT SURE WHO I SHOULD BE
3 CROSS-EXAMINING, BUT I CAN'T CROSS-EXAMINE MR.
4 BALDWIN, SO I'LL GO AHEAD AND CROSS-EXAMINE YOU.
5 I WANT TO ASK YOU IF YOU COULD TELL US YOUR
6 DATE OF BIRTH.

7 A SEPTEMBER 6, 1946.

8 Q AND WHERE WERE YOU BORN, SIR?

9 A BALTIMORE.

10 Q YOU HAVE PREPARED WHAT'S CALLED A CURRICULUM
11 VITAE, HAVE YOU NOT?

12 A I HAVE.

13 Q AND IN YOUR CURRICULUM VITAE YOU LIST YOUR
14 EDUCATION AND YOUR CONSULTATIONS AND YOUR
15 PUBLICATIONS AND SO FORTH, IS THAT CORRECT?

16 A YES, SIR.

17 Q YOU DO NOT LIST, DO YOU, SIR, IN YOUR
18 CURRICULUM VITAE THE PLACES THAT YOU HAVE BEEN
19 EMPLOYED ALONG THE WAY SINCE FINISHING COLLEGE,
20 DO YOU, SIR?

21 A NO.

22 Q ISN'T IT COMMON FOR SOMEONE GENERALLY WHEN
23 THEY'RE GIVING A CURRICULUM VITAE OR PREPARING
24 ONE, LISTING THEIR QUALIFICATIONS TO LIST THE
25 PLACES THAT ONE HAS BEEN EMPLOYED?

1 A YOU CAN WRITE THESE THINGS AS LONG AS YOU
2 WANT. I JUST FIGURE PEOPLE AREN'T REALLY THAT
3 CONCERNED ABOUT WHERE I WENT TO HIGH SCHOOL, AND
4 THEY'RE NOT THAT CONCERNED ABOUT JOBS I HAD IN
5 THE EARLY 1970'S. I'VE BEEN AN INDEPENDANT
6 CONSULTANT SINCE 1975, AND THAT'S THE PART OF MY
7 CAREER THAT I FIGURE IS MOST RELEVANT TO PEOPLE
8 WHO ARE INTERESTED IN WHAT MY QUALIFICATIONS ARE.

9 Q YES, SIR. BASICALLY THEN, AND I'LL GO OVER
10 WHAT YOU DID DO BY WAY OF EMPLOYMENT PRIOR TO
11 BECOMING AN INDEPENDANT CONSULTANT, BUT HAVE YOU
12 LISTED ON YOUR CURRICULUM VITAE THAT YOU'RE A
13 CONSULTANT FOR SOMETHING CALLED THE ASBESTOS
14 LITIGATION GROUP AND INDIVIDUAL ATTORNEYS FROM
15 1976 TO DATE?

16 A YES.

17 Q AND WOULDN'T IT BE TRUE, SIR, THAT THE
18 OVERWHELMING AMOUNT OF YOUR ACTIVITIES WHEN YOU
19 HAVE NOT BEEN A STUDENT, SINCE 1976, HAVE BEEN
20 YOUR ENGAGEMENT IN ASBESTOS LITIGATION ON BEHALF
21 OF PLAINTIFF'S ATTORNEYS MANY OF WHOM ARE MEMBERS
22 OR PARTICIPANTS IN WHAT'S CALLED THE ASBESTOS
23 LITIGATION GROUP?

24 A I WOULDN'T CALL IT THE OVERWHELMING AMOUNT.
25 IT'S PROBABLY OCCUPIED ABOUT HALF OF MY TIME OR A

1 LITTLE BIT LESS OVER THAT PERIOD OF 1976 -- AS
2 YOU POINT OUT, I'VE GOTTEN A DOCTORAL DEGREE. I
3 WAS A FULL-TIME DOCTORAL STUDENT FROM 1981 TO
4 1985 AND I'VE DONE CONSULTING FOR A WHOLE LOT OF
5 OTHER AGENCIES WHOSE NAMES WERE READ TO THE JURY
6 INITIALLY, AND I ALSO DO A LOT OF WORK. I DO
7 TEACHING. I'M ON THE FACULTY OF THE
8 JOHNS-HOPKINS UNIVERSITY. I HAVE GIVEN GUEST
9 LECTURES IN OTHER UNIVERSITIES IN THIS COUNTRY
10 AND OTHER COUNTRIES, AND SO I DO LOTS OF OTHER
11 THINGS WITH MY TIME.

12 Q YES, SIR. BUT ISN'T IT CORRECT -- LET'S
13 JUST TAKE 1984, FOR EXAMPLE --

14 A RIGHT.

15 Q -- AS A YEAR. THAT NINETY PERCENT OF YOUR
16 INCOME DURING 1984 CAME OUT OF THE ASBESTOS
17 LITIGATION WORKING ON BEHALF OF PLAINTIFF'S
18 ATTORNEYS?

19 A YES. WELL, YOU WERE ASKING ABOUT MY TIME
20 NOT MY INCOME. THAT'S A SEPARATE ISSUE. WHILE I
21 HAD BEEN AT SCHOOL, IT GOT TO THE POINT I WASN'T
22 DOING ANYMORE CONSULTING EXCEPT WALKING INTO
23 COURTROOMS AND SAYING WHO I WAS AND WHAT I KNEW.
24 THE REST OF IT WAS SPENT IN SCHOOL.

25 Q NOW, ARE YOU TELLING -- ARE YOU A TENURED

1 PROFESSOR AT JOHNS-HOPKINS UNIVERSITY?

2 A NO. I'M WHAT'S CALLED -- I'M A LECTURER.

3 Q YOU ARE NOT EVEN AN ASSISTANT PROFESSOR AT
4 JOHNS-HOPKINS, ARE YOU?

5 A WELL, I'M NOT ON WHAT'S CALLED THE TENURE OF
6 TRACK OF ASSISTANT PROFESSORS, ASSOCIATE
7 PROFESSORS, AND FULL PROFESSORS. I GIVE LECTURES
8 THERE AS PART OF TWO COURSES, THREE COURSES
9 ACTUALLY AT THE SCHOOL OF HYGIENE AND PUBLIC
10 HEALTH AND AT THE ENGINEERING SCHOOL FOR WHICH I
11 SOMETIMES GET PAID, SOMETIMES I DON'T GET PAID.

12 Q YES, SIR.

13 A I'M NOT A CAREER PROFESSOR. I'LL FREELY
14 ADMIT THAT.

15 Q YOU'RE NOT ANY SORT OF A PROFESSOR AT THE
16 JOHNS-HOPKINS UNIVERSITY?

17 A WELL, I THINK IT'S SPLITTING HAIRS TO SAY
18 THAT A LECTURER IS NOT A PROFESSOR. I DO AS MUCH
19 TEACHING AS SOME OF THE PROFESSORS OVER THERE.

20

21

22

23

24

25

1 BY MR. JOSEPHSON:

2 Q YES, SIR. BUT MY QUESTION AGAIN, WAS THAT
3 YOU ARE NOT A PROFESSOR, YOU ARE NOT ON THE --
4 YOU ARE NOT AN ASSISTANT PROFESSOR, AN ASSOCIATE
5 PROFESSOR, OR A FULL PROFESSOR AT THE
6 JOHNS-HOPKINS UNIVERSITY?

7 A OKAY. MY TITLE IS THAT I'M A LECTURER, AND
8 THAT THEREFORE I'M NOT TITLED AS A PROFESSOR IN
9 THE CATALOG, THAT'S CORRECT.

10 Q NOW THEN, I WOULD LIKE TO TALK TO YOU IF I
11 COULD A LITTLE BIT ABOUT YOUR BACKGROUND, TRY TO
12 GET SOME DATES DOWN. I THINK THAT WE HAVE SOME
13 PAPER UNDER HERE. MIGHT I MOVE THE CONSPIRACY
14 FOR A BRIEF MOMENT?

15 LET'S SEE IF WE MIGHT JUST GO OVER, IF WE
16 COULD, SIR, WHEN YOU FINISHED, GRADUATED FROM
17 COLLEGE.

18 A 1968.

19 Q AND YOU GOT AN ENGINEERING DEGREE, IS THAT
20 CORRECT?

21 A CHEMICAL ENGINEERING, YES, SIR.

22 Q AND THEN DID YOU GO TO WORK FOR SOMEONE?

23 A YES. I WENT TO WORK FOR HERCULES,
24 INCORPORATED, IN THE CHEMICAL INDUSTRY.

25 Q YES, SIR. AND DID YOU WORK THERE

1 APPROXIMATELY A YEAR AND A HALF?

2 A YES.

3 Q AND WOULD THAT TAKE US UP TO ABOUT 1970?

4 A LATE '69.

5 Q NOW, WHEN YOU LEFT HERCULES -- YOU LEFT
6 HERCULES IN 1969?

7 A YES, SIR.

8 Q NOW, THIS JOB DIDN'T HAVE ANYTHING TO DO
9 WITH ASBESTOS, DID IT?

10 A ASIDE FROM BREATHING IT, NO.

11 Q YES, SIR. YOU WEREN'T INVOLVED WITH
12 ASBESTOS, WERE YOU, SIR?

13 A WELL, I MEAN, IT WAS USED AS AN INSULATION
14 PRODUCT IN THE CHEMICAL PLANT WHERE I WORKED, BUT
15 I WAS NOT STUDYING THE HEALTH AFFECTS OF ASBESTOS
16 AT THAT TIME.

17 Q YOU LEFT ABOUT 1969 IN PART BECAUSE YOU
18 WEREN'T PROMOTED, ISN'T THAT CORRECT?

19 A NO.

20 Q THAT'S NOT TRUE AT ALL?

21 A THAT'S NOT TRUE AT ALL.

22 Q ALL RIGHT, SIR. WHERE DID YOU GO AFTER --
23 IS THIS YOUR ONE AND ONLY JOB IN PRIVATE
24 INDUSTRY?

25 A I WORKED FOR CHEVRON ASPHALT COMPANY WHEN I

1 WAS IN COLLEGE IN THE CONTROL LABORATORY TESTING
2 ASPHALT. THAT WAS A SUMMER JOB. I THINK THAT'S
3 ALL THE WORK TAHT I DID FOR PRIVATE INDUSTRY,
4 YES.

5 Q SINCE 1969 THEN, AFTER YOU RECEIVED YOUR
6 DEGREE, YOU HAVEN'T BEEN INVOLVED IN ANY
7 EMPLOYMENT WITH PRIVATE INDUSTRY?

8 A NO.

9 Q THEN AFTER THAT YOU TOOK A VACATION, I THINK
10 YOU 'VE DESCRIBED IT AS, IS THAT CORRECT?

11 A I TOOK A YEAR OFF. I HAD SAVED SOME MONEY,
12 I WAS REJECTED FOR THE DRAFT --

13 Q YES, SIR.

14 A -- AND I TOOK A YEAR OFF.

15 Q AND I THINK YOU 'VE TOLD US BEFORE, YOU
16 HITCHHIKED THROUGH MOROCCO AND MEXICO FOR ABOUT A
17 YEAR?

18 A AND TEXAS, CALIFORNIA, MEXICO.

19 Q I GUESS IT'S POSSIBLE SONE OF US RIGHT HERE
20 IN THIS ROOM MAY HAVE SEEN YOU ON THE HIGHWAY?

21 A THEY MAY HAVE EVEN PICKED ME UP.

22 Q AFTER 1970 DID YOU GO BACK TO SCHOOL AGAIN?

23 A YES.

24 Q AND WHAT YEAR WOULD THAT BE?

25 A WELL, THAT WAS IN LATE 1970, SEPTEMBER.

1 Q AND YOU WENT TO GET YOUR MASTERS ?

2 A YES, SIR.

3 Q AND WHEN DID YOU RECEIVE YOUR MASTER'S
4 DEGREE ?

5 A I COMPLETED THE REQUIREMENTS IN '71, THE
6 DEGREE WAS FORMALLY AWARDED IN '72.

7 Q I'M GOING TO PUT 1971, 1972, MASTER'S.

8 A AFTER 1972 WHEN YOU GOT YOUR MASTER'S DEGREE, FOR
9 WHOM WERE YOU EMPLOYED ?

10 A THE BALTIMORE COUNTY DIVISION OF AIR
11 POLLUTION AND INDUSTRIAL HYGIENE.

12 Q BALTIMORE COUNTY ? AND HOW LONG DID YOU WORK
13 FOR BALTIMORE COUNTY ?

14 A A LITTLE OVER A YEAR AND A HALF.

15 Q ONE AND A HALF YEARS. AND DOES THAT TAKE US
16 UP TO ABOUT 1974 ?

17 A '73.

18 Q THEN AT BALTIMORE COUNTY, DOCTOR, WHAT TYPE
19 OF WORK DID YOU DO THERE ?

20 A I WAS RESPONSIBLE FOR INDUSTRIAL COMPLIANCE
21 WITH THE AIR POLLUTION LAWS, THE AIR POLLUTION
22 REGULATIONS FOR THE STATE OF MARYLAND,
23 PRINCIPALLY COMPANIES USING CHEMICALS, BECAUSE I
24 HAD A BACKGROUND IN CHEMICAL TECHNOLOGY.

25 I ALSO DID SPECIAL INVESTIGATIONS OF TOXIC

1 HAZARDS FOR THE HEALTH DEPARTMENT WHEN
2 PARTICULARLY UNUSUAL OR TOUGH PROBLEMS CAME UP.
3 AND I ALSO LOOKED INTO COMMUNITY EXPOSURE TO
4 ASBESTOS IN VARIOUS BRANCHES THROUGH OTHER PARTS
5 OF THE HEALTH DEPARTMENT AS WELL AS MY OWN
6 DIVISION.

7 Q DID YOU EVER CONDUCT ANY DUST COUNTS ON
8 ASBESTOS WHILE YOU WERE THERE?

9 A NO. I ARRANGED FOR DUST COUNTS TO BE DONE,
10 BUT I DIDN'T ACTUALLY OPERATE THE PUMPS OR SQUINT
11 THROUGH THE MICROSCOPE AND COUNT FIBERS.

12 Q AND AFTER YOU WERE WITH BALTIMORE COUNTY FOR
13 APPROXIMATELY A YEAR AND A HALF, DID YOU HAVE
14 SOME DISAGREEMENTS WITH THE PEOPLE WHO YOU WORKED
15 WITH THERE?

16 A YES, I DID.

17 Q AND DID THIS RESULT IN YOUR LEAVING YOUR
18 EMPLOYMENT WITH BALTIMORE COUNTY AFTER
19 APPROXIMATELY WORKING THERE A YEAR AND A HALF?

20 A MY DEPARTURE FROM THE JOB IN THE END WAS
21 COMPLETELY MY DECISION, IT WAS IN NO WAY FORCED,
22 BUT THEY DID -- THEY DID PUT PRESSURE ON ME,
23 BECAUSE I HAD TESTIFIED AT A CONGRESSIONAL
24 HEARING ABOUT COMMUNITY EXPOSURE TO ASBESTOS, AND
25 THEY TRIED TO FIRE ME, AND THERE WAS SOME ADVERSE

1 PUBLICITY TO THE HEALTH DEPARTMENT ABOUT THAT,
2 AND THEN THEY HIRED ME BACK WITH FULL BACK-PAY,
3 AND THEN I RESIGNED OF MY OWN FREE WILL.

4 Q YES, SIR. NOW, THAT WAS THE BALTIMORE
5 COUNTY, THESE PEOPLE WHO YOU WORKED WITH FOR THE
6 COUNTY --

7 A RIGHT.

8 Q -- OF BALTIMORE THAT PUT THIS PRESSURE ON
9 YOU, AS YOU PUT IT?

10 A RIGHT. WELL, THEY WERE GOVERNMENT
11 BUREAUCRATS, SUCH AS ONE CAN FIND IN MANY
12 GOVERNMENT AGENCIES.

13 Q YES, SIR. AND WHERE DID YOU GO TO WORK
14 NEXT?

15 A I WENT TO WORK FOR THE CENTER FOR SCIENCES
16 IN THE PUBLIC INTEREST IN WASHINGTON, D.C.

17 Q LET ME PUT THAT DOWN. CENTER FOR SCIENCES.
18 HOW LONG DID YOU WORK -- IN THE PUBLIC INTEREST.
19 HOW LONG DID YOU WORK THERE?

20 A A LITTLE LESS THAN A YEAR.

21 Q AND ABOUT NINE MONTHS?

22 A YES.

23 Q WOULD THAT PUT US TO ABOUT 1974?

24 A SOMETIME IN 1974, RIGHT.

25 Q AND WHAT TYPE OF WORK DID YOU DO IN THE

1 CENTER FOR PUBLIC INTEREST?

2 A WE WOULD -- WE WOULD PETITION GOVERNMENT
3 AGENCIES FOR REGULATIONS. WE WERE INVOLVED IN --
4 WE WOULD OCCASIONALLY GET INVITED TO
5 CONGRESSIONAL HEARINGS AND TESTIFY ABOUT
6 LEGISLATION THAT WAS BEING CONSIDERED BY VARIOUS
7 BRANCHES OF THE GOVERNMENT, EITHER WITH RESPECT
8 TO TOXIC SUBSTANCES OR ENERGY CONSERVATION, WHICH
9 HAD SUDDENLY BECOME A BIG THING WITH THE ENERGY
10 CRISIS.

11 AND A LOT OF MY ACTIVITIES HAD TO DO WITH
12 ASBESTOS, AND THEN WHEN THE VINYL CHLORIDE THING
13 HIT, THAT IS, THE FACT WAS REVEALED THAT THIS
14 PETROCHEMICAL VINYL CHLORIDE WAS A CAUSE OF
15 CANCER, THE SAME CHEMICAL THAT WAS USED AS A
16 PROPELLANT IN SUCH THINGS AS CLAIROL, SUMMER
17 BLONDE, WE HAD PLENTY OF MORE WORK IN TERMS OF
18 TRYING TO CONTROL PUBLIC EXPOSURE TO THAT
19 CARCINOGEN. AND I BECAME INVOLVED IN THAT.

20 Q YES, SIR. AND YOU LEFT THE CENTER FOR
21 SCIENCE IN THE PUBLIC INTEREST IN LESS THAN A
22 YEAR?

23 A YES, SIR.

24 Q AND THEN WHERE APPROXIMATELY -- WHERE DID
25 YOU GO AFTER THAT?

1 A MY NEXT JOB WAS THE GROUP CALLED THE
2 MARYLAND PUBLIC INTEREST RESEARCH GROUP.

3 Q IS THERE AN ABBREVIATION FOR THAT?

4 A IT USED TO CALL ITSELF MARYPIRG,
5 M-A-R-Y-P-I-R-G.

6 Q THAT'S THE MARYLAND PUBLIC INTEREST RESEARCH
7 GROUP?

8 A RIGHT.

9 Q AND HOW LONG WERE YOU THERE?

10 A ABOUT EIGHT OR NINE MONTHS.

11 Q WOULD THAT TAKE US INTO 1975?

12 A RIGHT.

13 Q AND WAS THIS ANOTHER GROUP -- WELL, TELL ME
14 THIS, WHAT TYPE OF GROUP WAS IT?

15 A WELL, IT WAS A LITTLE DIFFERENT IN STYLE
16 THAN THE WASHINGTON GROUP. IT FOCUSED MORE ON
17 STATE AND LOCAL ISSUES, AND THE IDEA WAS TO TRY
18 AND GET STUDENTS INVOLVED IN VARIOUS TYPES OF
19 ACTIVITIES, ENVIRONMENTAL ACTIVITIES, CONSUMER
20 PROTECTION ACTIVITIES, OTHER THINGS THAT THEY
21 WERE INTERESTED IN OR THAT THEY WOULD TAKE AN
22 INTEREST IN THAT WE WERE ALREADY WORKING ON. IT
23 RANGED FROM THINGS LIKE THE FAT CONTENT IN GROUND
24 BEEF IN THE LOCAL SUPERMARKETS TO TOXIC
25 SUBSTANCES LIKE ASBESTOS.

1 Q AND YOU SAY YOU REMAINED THERE ABOUT EIGHT
2 OR NINE MONTHS?

3 A YES.

4 Q AND AFTER THE EIGHT OR NINE MONTH PERIOD
5 WERE YOU DISCHARGED OR DISMISSED?

6 A I WAS FIRED.

7 Q AND YOU WERE FIRED BY THE STUDENTS?

8 A RIGHT. THERE WAS A DISPUTE OVER THEIR
9 TACTICS, AND I CRITICIZED THEIR TACTICS IN TRYING
10 TO GET SOME STUDENT ELECTED WHO HAD PROMISED TO
11 GIVE THEM MORE MONEY THE NEXT YEAR IF HE WAS
12 ELECTED AS PRESIDENT OF THE STUDENT BODY, AND I
13 TOLD THEM THAT THEY WOULD BE BETTER TO GO OUT OF
14 BUSINESS THAN TO STAY IN BUSINESS DOING SUCH
15 THINGS. THEY TOLD ME I WAS NAIVE, AND THEY HELD
16 A VOTE, AND THE VOTE WAS SOMETHING LIKE FIVE TO
17 FOUR TO LET ME GO. IT WAS THE BEST THING THAT
18 EVER HAPPENED TO ME.

19 I PRINTED UP SOME BUSINESS CARDS AND I'VE
20 BEEN AN INDEPENDENT CONSULTANT EVER SINCE.

21 Q YES, SIR. AND THEN IN ABOUT -- AFTER YOU
22 WERE DISMISSED BY THE STUDENTS IN ABOUT 19 --
23 WHEN, '76?

24 A 1975.

25 Q -- 1975, YOU BECAME AN INDEPENDENT

1 CONSULTANT, WOULD THAT BE CORRECT?

2 A YES.

3 Q AND YOU HAVE BEEN AN INDEPENDENT CONSULTANT
4 SINCE 1975?

5 A YES, SIR.

6 Q WITH THE EXCEPTION, I WANT TO GO OVER THIS,
7 THERE WAS A TIME AFTER 1975 WHEN YOU WENT BACK TO
8 SCHOOL FOR THE THIRD TIME TO GET YOUR DOCTOR OF
9 SCIENCE?

10 A WELL, I CONTINUED TO FUNCTION AS AN
11 INDEPENDENT CONSULTANT DURING THOSE YEARS, TOO,
12 BUT MY CONSULTING ACTIVITIES WERE SOMEWHAT
13 REDUCED FROM WHAT THEY OTHERWISE WOULD HAVE BEEN
14 I SUPPOSE.

15 Q AND WHEN DID YOU GO BACK TO SCHOOL?

16 A 1981.

17 Q AND HOW LONG WERE YOU IN SCHOOL?

18 A FROM -- ABOUT FOUR YEARS. THE DEGREE WAS
19 AWARDED IN MAY OF 1985, LAST YEAR.

20 Q AND THAT'S CALLED A DOCTOR OF SCIENCE?

21 A RIGHT.

22 Q AND DURING THE PERIOD FROM 1981 TO 1985
23 WHILE YOU WERE GETTING YOUR DOCTOR OF SCIENCE DID
24 YOU WRITE THE BOOK THAT THE JURY HAS HEARD ABOUT
25 ON ASBESTOS?

1 A YES.

2 Q NOW, TO MAKE IT CLEAR, IS IT CORRECT THEN
3 THAT YOU DO NOT HAVE A DEGREE IN EPIDEMIOLOGY?

4 A WELL, I TOOK A NUMBER OF COURSES IN IT, BUT
5 I DON'T HAVE A DEGREE THAT'S FROM THE DEPARTMENT
6 OF EPIDEMIOLOGY.

7 Q THERE REALLY IS A DEPARTMENT OF
8 EPIDEMIOLOGY, IS THERE NOT?

9 A RIGHT.

10 Q AND THERE REALLY ARE REAL LIVE
11 EPIDEMIOLOGISTS?

12 A THERE ARE PEOPLE WHO GET DEGREES FROM THAT
13 DEPARTMENT.

14

15

16

17

18

19

20

21

22

23

24

25

1 Q YES, SIR. AND YOU'RE NOT A BIOSTATISTICIAN,
2 IS THAT CORRECT?

3 A NO. I TOOK COURSES IN BIOSTATISTICS FROM
4 THAT DEPARTMENT, BUT I DIDN'T GRADUATE FROM THE
5 DEPARTMENT OF BIOSTATISTICS. SO, TECHNICALLY,
6 I'M NOT A BIOSTATISTICIAN, NO.

7 Q OKAY. AND YOU'RE NOT A MEDICAL DOCTOR?

8 A THAT'S CORRECT.

9 Q AND ORIGINALLY WHEN YOU ENROLLED AT
10 JOHNS-HOPKINS TO GET YOUR DOCTOR OF SCIENCE, YOU
11 ACTUALLY SIGNED UP INITIALLY FOR A DEGREE IN THE
12 DOCTOR OF PUBLIC HEALTH OR SOMETHING, DID YOU
13 NOT?

14 A YES. WHEN I ORIGINALLY APPLIED TO THE
15 SCHOOL I APPLIED TO BE IN THE -- TO GET A DEGREE
16 OF DOCTOR OF PUBLIC HEALTH. I DIDN'T UNDERSTAND
17 AT THAT TIME THAT THE PROGRAM IN DOCTOR OF
18 SCIENCE WAS SOMEWHAT MORE FLEXIBLE AND WOULD BE
19 MORE SUITABLE TO MY DESIRES THAN THE MORE
20 RESTRICTIVE REQUIREMENTS, JUST GENERAL
21 REQUIREMENTS THAT THEY HAD FOR PUBLIC HEALTH
22 DEGREES. I WAS SO ADVISED BY MY ADVISOR. HE
23 SAID, LOOK, ALL OF MY OTHER STUDENTS ARE IN THE
24 DOCTOR OF SCIENCE PROGRAM, YOU'LL PROBABLY FIND
25 YOURSELF NEEDLESSLY ENCUMBERED IF YOU GO THROUGH

1 WITH DOCTOR OF PUBLIC HEALTH. SO, WHY DON'T YOU
2 JUST CHANGE IT? I TOOK HIS ADVICE.

3 Q YES, SIR. SO, YOU DID NOT GET A DEGREE AS A
4 DOCTOR OF PUBLIC HEALTH?

5 A NO. BUT I MEAN, THE DIFFERENCES ARE RATHER
6 INSIGNIFICANT TO ANYBODY WHO KNOWS.

7 Q YES, SIR. BUT THEY'RE SIGNIFICANT ENOUGH SO
8 THAT A DEGREE IS CONFIRMED ON PEOPLE WHO GET A
9 DEGREE AS A DOCTOR OF PUBLIC HEALTH VERSUS A
10 DOCTOR IN SCIENCE.

11 A YES. I MEAN, THE PEOPLE GO TO WORK FOR THE
12 SAME PLACES WHEN THEY GET OUT NO MATTER WHICH
13 DEGREE THEY HAVE.

14 Q YES, SIR. NOW, DO YOU HAVE ANY EMPLOYEES IN
15 YOUR JOB AS A CONSULTANT?

16 A NO. I SUCCEEDED IN NOT HAVING A BOSS OR
17 BEING ONE FOR THE LAST ELEVEN YEARS.

18 Q I WANT TO ASK YOU ABOUT SOME OF THE THINGS
19 YOU'VE DONE, THEN. WE'VE TALKED ABOUT GOING BACK
20 TO SCHOOL. WHEN DID YOU FIRST GET INVOLVED WITH
21 ASBESTOS LITIGATION?

22 A I USED TO GET LETTERS FROM LAWYERS WHEN I
23 WAS AT THE CENTER FOR SCIENCE IN THE PUBLIC
24 INTEREST, AND I WOULD SEND THEM SOMETHING IF THEY
25 ASKED FOR COPIES OF REPORTS OR SOMETHING, BUT I

1 DIDN'T ACTUALLY GET INVOLVED AS A PARTICIPANT IN
2 ANY WAY UNTIL 1976.

3 Q WERE YOU CONTACTED DURING THAT YEAR BY A
4 LAWYER FROM TEXAS BY THE NAME OF GILBERT ADAMS?

5 A YES. IN BEAUMONT.

6 Q YES, SIR. AND WHAT DID MR. ADAMS ASK YOU TO
7 DO?

8 A MR. ADAMS EXPLAINED THAT HE WAS INVOLVED IN
9 A PROCEEDING SOMEWHAT LIKE THIS INVOLVING A
10 SINGLE PLAINTIFF AND, IN FACT, IT WAS A WIDOW OF
11 A MAN WHO HAD DIED FROM ASBESTOSIS AND
12 MESOTHELIOMA. AND HE EXPLAINED TO ME THAT IN
13 ORDER TO ESTABLISH HIS CASE HE NEEDED TO SHOW
14 THAT IT HAD BEEN KNOWN FOR A LONG TIME THAT THERE
15 WAS SUCH A DISEASE AS ASBESTOSIS AND HAD BEEN
16 KNOWN FOR SOMETIME THAT THERE WAS SUCH A DISEASE
17 AS LUNG CANCER AND OTHER DISEASES ASSOCIATED WITH
18 ASBESTOS, AND HE ASKED ME IF I WOULD BE WILLING
19 TO JUST PRESENT THIS INFORMATION IN A COURT OF
20 LAW. AND I SAID THAT I WOULD BE WILLING TO DO
21 THAT.

22 Q YES, SIR. AND DID YOU BEGIN THEN AT THAT
23 POINT IN TIME UP TO THE PRESENT TO BEGIN TO
24 TESTIFY, AND CONSULT ON A REGULAR BASIS AS YOUR
25 PRIMARY SOURCE OF INCOME FROM 1976 UP UNTIL THE

1 PRESENT IN THE ASBESTOS LITIGATION ON BEHALF OF
2 PLAINTIFFS AND THIS GROUP THAT I THINK YOU'VE
3 TOLD US ABOUT EARLIER, THE ASBESTOS -- YOU'LL
4 HAVE TO FINISH THE NAME OUT. I FORGOT --
5 ASBESTOS LITIGATION GROUP.

6 A WELL, THAT'S NOT QUITE THE WAY IT HAPPENED.
7 THE ACTIVITIES IN 1976 WERE RATHER FLEETING AND
8 LIMITED AND DIDN'T INVOLVE A MAJOR PART OF MY
9 INCOME. IN 1976 AND 1977 MOST OF MY INCOME CAME
10 FROM CONSULTING WITH THE LARGE ENVIRONMENTAL
11 GROUPS AND GOVERNMENT AGENCIES, GROUPS LIKE THE
12 NATURAL RESOURCES DEFENSE COUNSEL, THE
13 ENVIRONMENTAL DEFENSE FUND, AND GOVERNMENT
14 AGENCIES INCLUDING THE FEDERAL TRADE COMMISSION
15 AND THE U. S. CONGRESS OFFICE OF TECHNOLOGY
16 ASSESSMENT. AND SOME TIME LIKE AROUND 1978 I
17 SUPPOSE IN THE YEAR 1978 I BECAME MUCH MORE
18 INTENSIVELY INVOLVED IN DOING RESEARCH ON THIS
19 WHOLE PROBLEM. LOOKING INTO THE HISTORY OF THESE
20 WORKERS' COMPENSATION CLAIMS, THESE CONTRACT UNIT
21 COMPENSATION CLAIMS WHICH NECESSITATED GOING TO
22 STATE COMPENSATION BOARDS AND GOING THROUGH
23 VOLUMINOUS RECORDS IN THE STATE AGENCIES, AND
24 THIS I, DID AS A CONSULTANT FOR THE ASBESTOS
25 LITIGATION GROUP.

1 Q ALL RIGHT, SIR.

2 A SO, AT THAT TIME IT BECAME A MAJOR ACTIVITY
3 OF MINE.

4 Q AND YOU BEGAN, I THINK AT THAT TIME,
5 CHARGING VARIOUS ATTORNEYS WHAT I THINK YOU HAVE
6 REFERRED TO AS RETAINER FEES, WHERE THEY WOULD
7 PUT YOU ON RETAINER, YOU WOULD CHARGE THEM A FEE
8 TO HAVE YOU ON RETAINER TO ASSIST THEM GENERALLY
9 IN THIS LITIGATION.

10 A THAT WOULD HAVE BEEN PROBABLY AFTER I BECAME
11 USED AS A WITNESS IN THESE TRIALS, WHICH DIDN'T
12 START UNTIL 1979.

13 Q AND YOUR PRESENT RETAINER FEE I THINK -- I
14 THINK IT'S GONE UP SOME, BUT IS IT PRESENTLY
15 ABOUT TWELVE HUNDRED DOLLARS AN ATTORNEY?

16 A IT'S A THOUSAND DOLLARS.

17 Q A THOUSAND DOLLARS AN ATTORNEY?

18 A FOR WHICH THE ATTORNEY CAN LIST ME IN TWO
19 THOUSAND ASBESTOS CASES AND CHARGE THEM EACH
20 FIFTY CENTS.

21 Q YES, SIR. AND THEN WHEN YOU ACTUALLY DO THE
22 WORK FOR THE ATTORNEY, DR. CASTLEMAN, YOU HAVE A
23 CHARGE, I THINK YOU'VE TOLD US ABOUT, OF TWELVE
24 HUNDRED DOLLARS A DAY?

25 A YES. THIS IS WHAT I CHARGE TO TESTIFY.

1 Q YES, SIR. AND YOU HAD ABOUT TWENTY-FIVE
2 ATTORNEYS WHO HAVE PAID YOU THE INITIAL RETAINER
3 FEE, WOULD THAT BE CORRECT, SIR?

4 A THAT SOUNDS ABOUT RIGHT. THIS IS OVER A
5 SEVEN YEAR PERIOD.

6 Q YES. BUT IN ADDITION TO PAYING YOU THE
7 RETAINER FEE, THESE ATTORNEYS ARE THEN ALLOWED,
8 IF THEY CONTINUE TO USE YOU IN A NUMBER OF CASES,
9 THEY HAVE TO PAY YOU ONCE THE RETAINER FEE IS
10 EXHAUSTED.

11 A WELL, THEY HAVE TO PAY ME IF THEY ACTUALLY
12 HAVE TO BRING ME TO TRIAL.

13 Q YES, SIR.

14 A IF THEY LIST ME AS A WITNESS AND THEY SETTLE
15 THE CASE ON THE BASIS OF HAVING LISTED MYSELF OR
16 JOE WAGONER OR WHOEVER ELSE THEY USE, THEY DON'T
17 HAVE TO PAY ME ANYTHING.

18 Q NOW, YOU HAVE MENTIONED DR. WAGONER. YOU
19 KNOW DR. WAGONER, DO YOU NOT?

20 A I'VE KNOWN DR. WAGONER FOR MANY YEARS.

21 Q IN FACT, I THINK YOU EVEN REFERRED TO HIM AS
22 SORT OF A FRIENDLY COMPETITOR.

23 A MAYBE IN SOME DEPOSITION I COULD HAVE CALLED
24 HIM THAT, BUT I DON'T CONSIDER ANYBODY A
25 COMPETITOR.

1 Q AND WHEN YOU SAID COMPETITOR, YOU MEANT A
2 COMPETITOR FOR THE TESTIFYING BUSINESS, DID YOU
3 NOT, SIR?

4 A WELL, HE TESTIFIES ON SOME OF THE SAME
5 THINGS THAT I DO, THE HISTORY OF KNOWLEDGE OF
6 ASBESTOS DISEASE. I'M, OF COURSE, THOUROUGHLY
7 FAMILIAR WITH THE PUBLISHED LITERATURE AS WELL AS
8 CORPORATE KNOWLEDGE.

9 Q YES, SIR. NOW, WHEN YOU FIRST STARTED
10 TESTIFING, YOU LIMITED YOUR TESTIMONY, DID YOU
11 NOT, TO PRODUCING ARTICLES AT VARIOUS TRIALS THAT
12 YOU HAD FOUND OR THAT HAD BEEN GIVEN TO YOU BY
13 PLAINTIFFS' ATTORNEYS?

14 A YES. THESE WERE MOSTLY ARTICLES THAT I HAD
15 LOOKED UP IN THE PUBLISHED AND OPEN SCIENTIFIC
16 LITERATURE.

17 Q YES. AND IN FACT, I THINK YOU'VE INDICATED
18 IN PRIOR TESTIMONY THAT YOU DID NOT BELIEVE THAT
19 IT WOULD BENEFIT THE JURY TO HEAR WHAT YOUR
20 OPINION WAS CONCERNING THE ARTICLES THAT EITHER
21 THE PLAINTIFFS GAVE YOU OR THAT YOU BROUGHT TO
22 THE TRIAL YOURSELF, HAVE YOU NOT, SIR?

23 A I MAY HAVE SAID THAT EARLIER BEFORE WE HAD
24 SO MUCH INFORMATION ON CORPORATE KNOWLEDGE, YES.

25 Q YES, SIR. IN FACT, DO YOU RECALL TESTIFING

1 IN A CASE CALLED NEIL BACK IN AUGUST OF 1982?

2 A YES.

3 Q AND DID YOU SAY IN THE NEIL CASE WHEN YOU
4 WERE ASKED IF IN YOUR TESTIMONY YOU THOUGHT YOU
5 COULD GIVE OPINIONS DID YOU SAY, "I THINK THAT IT
6 REALLY DOESN'T AID THE JURY A GREAT DEAL TO KNOW
7 WHAT I THINK ABOUT ALL THIS STUFF. I THINK THAT
8 IT IS, AND OF COURSE THIS OPINION MAY OR MAY NOT
9 BE SHARED BY OTHER PARTIES INVOLVED IN THESE
10 ACTIONS, BUT I THINK THAT THE DOCUMENTATION, IF
11 IT CAN BE PRESENTED IN A REASONABLY COMPLETE WAY,
12 SPEAKS WELL ENOUGH FOR ITSELF THAT A JURY SHOULD
13 BE ABLE TO UNDERSTAND IT AND EVALUATE IT"?

14 A I STILL THINK THAT'S TRUE.

15 Q BUT YOU ARE HERE TODAY AS YOU WERE, I GUESS,
16 DURING 1982 EXPRESSING OPINIONS ABOUT WHAT YOU
17 BELIEVE, THAT THE DOCUMENTS WHICH YOU'VE BROUGHT
18 WITH YOU STATE OR DON'T STATE.

19 A YES. THAT'S SORT OF A CUSTOM OF THE
20 COURTROOM, BUT IT'S REALLY THE DOCUMENTS THAT ARE
21 THE BASIS OF MY OPINION WHICH THE JURY IS GOING
22 TO DECIDE ON, NOT WHAT I SAY. AND WHAT I WAS
23 SAYING THEN AND WHAT I WOULD SAY TODAY IS IF YOU
24 CAN MAKE THIS FULL OF A PRESENTATION OF THE
25 DOCUMENTATION, THAT'S QUITE SUFFICIENT IN ITSELF,

1901

1 MY OPINIONS NOTWITHSTANDING.

2 Q AND YOU HAVE ALSO STATED, HAVE YOU NOT, DR.
3 CASTLEMAN, THAT YOU SEE YOUR PRIMARY PURPOSE AS
4 BRINGING DOCUMENTS TO COURT WHICH WILL HELP THE
5 PLAINTIFFS?

6 A I DON'T BELIEVE I EVER SAID IT QUITE LIKE
7 THAT. PERHAPS YOU CAN SHOW ME WHAT EXACTLY IT
8 WAS THAT I SAID.

9 Q THAT SAME DEPOSITION, WERE YOU ASKED, "WELL,
10 AT TRIAL DO YOU PRESENT THINGS THAT ARE HELPFUL
11 TO THE PLAINTIFFS AND THINGS THAT ARE NOT HELPFUL
12 TO THE PLAINTIFF?" AND DID YOU STATE, "WE ARE
13 GENERALLY LIMITED TO PRESENTING THINGS THAT ARE
14 MOST HELPFUL TO THE PLAINTIFFS' CASE"?

15 A AND I GO ON TO SAY, "BUT I THINK IN
16 FAIRNESS, THERE ISN'T VERY MUCH THAT'S HELPFUL TO
17 THE DEFENSE IN THE ENTIRE HISTORY OF THE MEDICAL
18 LITERATURE ON ASBESTOS."

19 Q YES, SIR. I UNDERSTAND THAT. BUT WERE YOU
20 LIMITED TO JUST PRESENTING THINGS MOST HELPFUL TO
21 THE PLAINTIFFS' CASE?

22 A THAT'S BECAUSE I ONLY ANSWER THE QUESTIONS
23 I'M ASKED, AND THERE AREN'T TOO MANY QUESTIONS
24 YOU CAN ASK ME THAT ARE GOING TO HELP YOU.

25

1902

1 BY MR. JOSEPHSON:

2 Q WELL, TIME WILL TELL, I GUESS. I WANT TO
3 ASK YOU ABOUT THE ASBESTOS LITIGATION GROUP, AND
4 THE MEETING THAT YOU'VE HAD WITH THEM.

5 A YES, SIR.

6 Q HAVE YOU GONE TO GROUP MEETINGS WHERE THE
7 ASBESTOS -- WHERE PLAINTIFFS' LAWYERS HAVE
8 GATHERED TO SEEK YOUR HELP AND ASSISTANCE IN
9 GATHERING DOCUMENTS FOR THEM?

10 A YES.

11 Q NOW, AS AN EXAMPLE, I'LL JUST TAKE ONE
12 DEFENDANT. YOU BROUGHT WITH YOU -- LET'S TAKE
13 OWENS-ILLINOIS -- YOU BROUGHT WITH YOU EIGHT
14 DOCUMENTS ON OWENS-ILLINOIS, EIGHT OR NINE
15 DOCUMENTS, IS THAT CORRECT?

16 A THAT SOUNDS ABOUT RIGHT.

17 Q IS IT YOUR TESTIMONY THAT THE CORRESPONDENCE
18 THAT EXISTS BETWEEN OWENS-ILLINOIS AND THE
19 SARANAC LABORATORIES CONSISTS OF EIGHT OR NINE
20 DOCUMENTS?

21 A NO. I MEAN, WE COULD READ DOCUMENTS IN THAT
22 FILE ALL DAY AND ALL NIGHT FOR, YOU KNOW, AT
23 LEAST A COUPLE OF DAYS PROBABLY. IT WAS A RATHER
24 THICK FILE AT THE SARANAC LABORATORY. AND I HAVE
25 READ FROM DOCUMENTS WHICH, AT LEAST IN MY

1. OPINION, CHARACTERIZE THE ESSENCE OF THAT FILE.

2. I WOULD BE MORE THAN HAPPY, OF COURSE, TO
3. READ FROM ANY OTHER DOCUMENTS FROM THE SAME FILE
4. SO THAT THE JURY CAN MAKE A BALANCED JUDGMENT OF
5. WHAT IT CONTAINS.

6. Q BUT IT'S BEEN YOU THAT HAS ACTUALLY MADE THE
7. DECISION OUT OF, LET'S SAY FIFTY OR SIXTY
8. DOCUMENTS, WHICH ONES YOU'VE PRODUCED?

9. A WELL, THE FILE IS AVAILABLE TO BOTH
10. PLAINTIFFS AND DEFENDANTS. IT'S A HISTORIC FILE
11. OF SARANAC LABORATORY.

12. YEARS AGO, WHEN I CAME ACROSS THIS FILE,
13. THERE WERE CERTAIN THINGS IN IT WHICH SEEMED TO
14. ME TO REALLY CONTAIN THE ESSENCE OF WHAT THE
15. FINDINGS WERE. THERE WAS THE FINAL LETTER
16. SAYING, "LOOK, WE'VE TESTED YOUR MATERIAL AND
17. IT'S HAZARDOUS," THERE WERE EARLIER LETTERS THAT
18. SAID THE SAME THING, AND THEN THERE WERE THE
19. ACTUAL REPORTS THAT WERE ATTACHED.

20. Q WERE THOSE ALL THE LETTERS IN THE SARANAC
21. FILES?

22. A NO. THERE WERE PLENTY OF OTHER LETTERS
23. COVERING RELATIVELY MUNDANE MATTERS.

24. Q AND IT'S YOUR OPINION -- THE REASON I ASK
25. YOU THIS IS BECAUSE INDIVIDUAL LAWYERS WILL BE

1 QUESTIONING YOU ABOUT THE DOCUMENTS WHICH YOU
2 APPARENTLY DIDN'T BRING WITH YOU, AND I WANT TO
3 GET YOUR OPINION AS TO WHETHER THE DOCUMENTS
4 WHICH YOU DIDN'T BRING INVOLVE MUNDANE MATTERS
5 AND DON'T RELATE IN ANY WAY TO THE OPINIONS WHICH
6 YOU GAVE?

7 A WELL, ALL I CAN SAY IS, THEY DON'T REALLY
8 CHANGE THE FUNDAMENTAL FINDINGS OF THE SARANAC
9 LABORATORY AS THEY WERE REPORTED TO
10 OWENS-ILLINOIS.

11 Q YES, SIR. IS THAT A YES OR A NO TO MY
12 QUESTION?

13 A WELL, ALL I CAN SAY IS, I'M MORE THAN HAPPY
14 TO MAKE AVAILABLE THROUGH MY CROSS-EXAMINATION TO
15 THE JURY ANYTHING THAT YOU WANT TO PRESENT.

16 Q NOW, WHEN YOU APPLIED TO JOHNS-HOPKINS, AND
17 I THINK IT WAS TO GET YOUR PH.D., OR YOUR DOCTOR
18 OF SCIENCE, WERE YOU FAMILIAR WITH THE STATEMENTS
19 OF A MR. JACOB SILVER?

20 A I DON'T RECALL THE NAME.

21 Q I MAY NOT BE -- JACOB SHER?

22 A I KNOW JACOB SHER.

23 Q DID YOU WORK FOR HIM?

24 A NO.

25 Q DID YOU WORK WITH HIM?

1 A I HAVE ON OCCASION.

2 Q DID YOU ASK HIM TO WRITE A LETTER OF
3 RECOMMENDATION FOR YOU TO GET YOUR PH.D.?

4 A I DON'T EVEN REMEMBER. PERHAPS.

5 Q I WANT TO ASK YOU ABOUT THIS STATEMENT BY
6 DR. SHER --

7

8 MR. BALDWIN: MAY I INQUIRE -- IS HE READING
9 IT FROM A LETTER, OR --

10

11 MR. JOSEPHSON: NO, YOUR HONOR, I'M READING
12 IT FROM A SUBPOENAED DOCUMENT.

13

14 MR. BALDWIN: WHAT'S THE EXHIBIT NUMBER, MAY
15 I ASK?

16

17 MR. JOSEPHSON: IT'S NOT ONE THAT IS AN
18 EXHIBIT, BECAUSE WE HAVEN'T HAD IT MARKED OR
19 LISTED. BUT IT IS NOT AN AFFIDAVIT, IT IS A
20 SUBPOENAED DOCUMENT, WHICH WAS SUBPOENAED IN A
21 LAWSUIT.

22

23 MR. BALDWIN: WE HAVE NOT SEEN IT, YOUR
24 HONOR.

25

1 THE COURT: DO YOU WISH TO EXAMINE IT?

2

3 MR. BALDWIN: I WOULD.

4

5 BY MR. JOSEPHSON:

6 Q DID MR. SHER STATE THAT, "MR. CASTLEMAN HAS
7 A TENDENCY TO BECOME VERY EMOTIONALLY INVOLVED IN
8 HIS WORK, HIS SENSE OF --

9

10 MR. BALDWIN: YOUR HONOR, WE WOULD ASK THAT
11 HE READ THE WHOLE THING AS IT RELATES TO MR.
12 CASTLEMAN IN CONTEXT, NOT PICK OUT ONE SENTENCE.

13

14 MR. JOSEPHSON: THIS IS --

15

16 THE COURT: WELL, COUNSEL, YOU'LL HAVE AN
17 OPPORTUNITY ON REDIRECT. IF THERE ARE ANY
18 PORTIONS OF IT THAT YOU WISH TO USE, COUNSEL WILL
19 MAKE IT AVAILABLE TO YOU.

20

21 BY MR. JOSEPHSON:

22 Q DOES IT STATE UNDER THE CATEGORY "WHAT DO
23 YOU CONSIDER TO BE THE APPLICANT'S WEAKNESS?",
24 "MR. CASTLEMAN HAS A TENDENCY TO BECOME VERY
25 EMOTIONALLY INVOLVED IN HIS WORK, HIS SENSE OF

1 OUTRAGE ABOUT CERTAIN CORPORATE ACTIVITIES MAY
2 HAVE COLORED HIS JUDGMENT"? IS THAT STATEMENT IN
3 THERE?

4 A THAT'S WHAT HE SAID.

5

6 MR. BALDWIN: WE ASK THAT WE BE FURNISHED
7 WITH A COPY OF THE DOCUMENT SO WE CAN USE IT ON
8 REDIRECT EXAMINATION,

9

10 MR. JOSEPHSON: NO PROBLEM, YOUR HONOR.

11

12 BY MR. JOSEPHSON:

13 Q AND SHORTLY AFTER -- AND MR. SHER IS AN
14 ATTORNEY WITH THE NATURAL RESOURCES DEFENSE
15 COUNCIL, IS THAT CORRECT?

16 A YES.

17 Q SOMEONE --

18 A YOU SHOULD SEE HIS SENSE OF OUTRAGE ABOUT
19 CERTAIN THINGS.

20 Q YES, SIR. HE'S SOMEONE WHO YOU ADMIRE AND
21 RESPECT, ISN'T THAT CORRECT?

22 A YES, HE IS.

23 Q AND SOMEONE WHO YOU'VE WORKED WITH?

24 A I'VE WORKED WITH ON OCCASION, YES.

25 Q I WANT TO THE ASK YOU ABOUT AN EVENT WHICH

1908

1 TOOK PLACE SHORTLY AFTER THIS LETTER OR STATEMENT
2 TO THE DIRECTOR OF ADMISSIONS BY MR. SHER WAS
3 WRITTEN, AND IT'S DATED 2-11-81. MR. SHER'S
4 STATEMENT. WE HAVE BEEN TALKING ABOUT A
5 GENTLEMAN, HAVE WE NOT, BY THE NAME OF VANDIVER
6 BROWN, DO YOU RECALL US TALKING ABOUT HIM?

7 A YES, SIR.

8 Q I THINK IN THE DOCUMENTS WHICH HAVE BEEN
9 REFERRED TO AS THE SUMNER SIMPSON DOCUMENTS THERE
10 ARE NUMEROUS LETTERS BACK AND FORTH BETWEEN
11 VANDIVER BROWN AND SUMNER SIMPSON AT
12 JOHNS-MANVILLE?

13 A YES.

14 Q SHORTLY AFTER MAY, OR FEBRUARY OF 1981, WHEN
15 MR. SHER WROTE HIS LETTER OR STATEMENT TO
16 JOHNS-HOPKINS, DID YOU HAVE OCCASION TO
17 CORRESPOND WITH MR. VANDIVER BROWN?

18 A YES. I HEARD THAT MR. VANDIVER BROWN WAS
19 STILL LIVING, CONTRARY TO SWORN ANSWERS TO
20 INTERROGATORIES BY JOHNS-MANVILLE.

21 Q YES, SIR. A DEFENDANT WHO'S NOT IN THIS
22 CASE, AS YOU KNOW?

23 A YES.

24 Q DID YOU TELL, WRITE VANDIVER BROWN AND TELL
25 HIM THAT YOU WERE WRITING HIM TO ADVISE HIM THAT,

1909

1 "JOHNS-MANVILLE WILL TRY TO TAKE YOUR LIFE TO
2 ASSURE YOUR SILENCE"?

3 A I THINK I INDICATED THAT THEY MIGHT TRY TO
4 TAKE HIS LIFE, YES.

5 Q AND AFTER TELLING THIS MAN -- WHO BY THEN
6 WAS APPROXIMATELY IN HIS EIGHTIES, WASN'T HE?

7 A I BELIEVE SO. HE DIED SOON AFTERWARD.

8 Q DO YOU SUSPECT IT WAS JOHNS-MANVILLE?

9 A NO. JOHNS-MANVILLE WAS IN BANKRUPTCY COURT
10 BY THEN.

11 Q YES, SIR. AFTER TELLING MR. BROWN, VANDIVER
12 BROWN, THAT YOU BELIEVE THAT JOHNS-MANVILLE WAS
13 GOING TO TAKE HIS LIFE TO ASSURE HIS SILENCE, DID
14 YOU THEN SAY AT THE END OF THE LETTER, "IF YOU
15 WOULDN'T MIND, I WOULD LOVE TO HAVE ONE OR TWO
16 PICTURES OF YOU TO USE IN A BOOK I AM WRITING"?

17 A WELL, THERE WERE OTHER THINGS IN THAT
18 LETTER.

19 Q YES, SIR.

20 A I GENUINELY WANTED TO TALK TO MR. BROWN AND
21 DISCUSS CERTAIN KINDS OF THINGS HAVING TO DO WITH
22 PUBLIC POLICY RELATING TO, FOR EXAMPLE, THE
23 POSSIBILITY THAT CRIMINAL SANCTIONS IN THE LAW
24 MIGHT RESULT IN PUBLIC HEALTH BENEFITS IN THE
25 AREA OF OCCUPATIONAL HEALTH. THERE WERE CERTAIN

1 THINGS I REALLY WOULD HAVE LOVED TO HAVE
2 DISCUSSED WITH MR. BROWN.

3 AND THE REASON FOR MY CONCERN ABOUT HIS
4 HEALTH WAS THAT THE COMPANY HAD SWORN THAT HE WAS
5 DEAD WHEN HE WAS STILL LIVING, THAT THE MAN WAS
6 POTENTIALLY THE MOST DEVASTATING WITNESS AROUND
7 AS FAR AS NOT ONLY THAT COMPANY WAS CONCERNED,
8 BUT THE WHOLE ASBESTOS INDUSTRY, AND THAT MR.
9 BROWN HIMSELF HAD ENUNCIATED A POLICY OF LETTING
10 WORKERS DIE AT JOHNS-MANVILLE RATHER THAN TELL
11 THEM THEY HAD ASBESTOS DISEASES, BECAUSE IF YOU
12 TOLD THEM THEY WERE SICK WITH ASBESTOSIS THEY
13 WOULD FILE WORKER'S COMPENSATION CLAIMS AND COST
14 A LOT OF MONEY.

15 Q SO, YOU WROTE A MAN WHO WAS IN HIS EIGHTIES
16 WITHOUT ANY BASIS AND TOLD HIM THAT YOU BELIEVED
17 THAT JOHNS-MANVILLE WAS GOING TO TAKE HIS LIFE?

18 A I SUSPECTED THAT HIS LIFE WAS IN DANGER ONCE
19 IT BECAME KNOWN TO PLAINTIFFS' ATTORNEYS THAT HE
20 WAS STILL ALIVE.

21 Q DID YOU HAVE ANY EVIDENCE BEFORE YOU WROTE
22 THIS MAN IN HIS EIGHTIES THAT JOHNS-MANVILLE, OR
23 ANYONE ELSE, WAS GOING TO TAKE HIS LIFE?

24 A I DIDN'T HAVE ANY SOLID EVIDENCE, BUT WHEN
25 THE STATE TROOPER CAME OUT TO ASK ME ABOUT THAT,

1 HE LEFT PERSUADED THAT I HAD JUST CAUSE FOR
2 WARNING MR. BROWN THAT HIS LIFE MIGHT BE IN
3 DANGER.

4 WHAT HAPPENED WAS THAT THE VARIOUS POLICE
5 AGENCIES THEN COMMUNICATED WITH EACH OTHER AND A
6 MARYLAND STATE TROOPER APPEARED AT MY DOOR AND
7 SAID, "WELL, WHAT'S THE BASIS FOR YOUR CONCERN?",
8 AND I TOLD HIM. AND HE WAS PERSUADED THAT IT WAS
9 NOT A FRIVILOUS CONCERN.

10 Q YES, SIR.

11 A THIS POLICEMAN.

12 Q AND THEN AFTER TELLING THIS MAN IN HIS
13 EIGHTIES THAT HIS EMPLOYER, OLD EMPLOYER, WAS
14 GOING TO KILL HIM, OR YOU BELIEVED WAS GOING TO
15 KILL HIM, YOU ASKED HIM IF HE COULD SEND YOU A
16 PICTURE SO YOU COULD INCLUDE IT IN YOUR BOOK, IS
17 THAT CORRECT, SIR?

18 A WELL, YOU'VE RATHER SIMPLIFIED THE LETTER.
19 BUT THAT WAS ANOTHER THING THAT I MENTIONED, YES.

20 Q NOW, AFTER YOU WENT TO JOHNS-HOPKINS TO GET
21 YOUR --

22
23 THE COURT: IS THIS AS GOOD A PLACE AS ANY
24 TO TAKE OUR BREAK?
25

1912

1 THE COURT: YES, YOUR HONOR.

2

3 THE COURT: LET'S TAKE A FIFTEEN MINUTE
4 BREAK.

5

6 THE MARSHAL: ALL RISE.

7

8 (WHEREUPON, THERE WAS A SHORT RECESS IN THE
9 PROCEEDINGS, AFTER WHICH THEY RESUMED AS FOLLOWS:)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE MARSHAL: ALL RISE.

2

3 THE COURT: BE SEATED. LADIES AND
4 GENTLEMEN, I'VE RECEIVED A REQUEST FROM VARIOUS
5 LAWYERS WHO HAVE PLANES TO CATCH THAT WE SHOW
6 MERCY ON THE JURY TODAY AND SEND YOU HOME A
7 LITTLE EARLY AND SO THEY CAN CATCH THEIR PLANES,
8 AND I THINK IT'S A REASONABLE REQUEST AND WE'LL
9 STOP ABOUT 4:00 WITH THE JURY. THE LAWYERS WILL
10 HAVE TO STAY A WHILE LONGER AFTER THAT.

11

12 EXAMINATION BY MR. JOSEPHSON:

13 Q DR. CASTLEMAN --

14

15 MR. JOSEPHSON: MAY I PROCEED, YOUR HONOR?

16

17 THE COURT: YES, SIR.

18

19 BY MR. JOSEPHSON:

20 Q DR. CASTLEMAN, I HAD FORGOTTEN TO ASK YOU
21 THIS. IS IT CORRECT THAT YOU HAVE GIVEN
22 TESTIMONY EITHER BY WAY OF DEPOSITION OR TRIAL IN
23 THE ASBESTOS LITIGATION ON APPROXIMATELY
24 FIFTY-SEVEN OCCASIONS?

25 A YES. THE DEPOSITIONS, OF COURSE, BEING

1 CALLED USUALLY BY DEFENDANTS.

2 Q YES. YOU'RE LISTED AS A PLAINTIFF'S WITNESS
3 AND THEN THE DEFENDANTS, AS THEY HAVE THE RIGHT
4 TO DO, ASK THE PLAINTIFFS TO PRODUCE YOU FOR YOUR
5 DEPOSITION, IS THAT CORRECT?

6 A YES, AGAIN AND AGAIN AND AGAIN.

7 Q YES, SIR. AS LONG AS YOU WISH TO KEEP BEING
8 LISTED AS AN EXPERT WITNESS, TESTIFY, AND BE IN
9 COURT YOU UNDERSTAND FROM HAVING DONE IT SO LONG
10 THAT THE DEFENDANTS HAVE A RIGHT TO TAKE YOUR
11 DEPOSITION, DO YOU NOT, SIR?

12 A YES. I JUST DON'T UNDERSTAND WHY THEY KEEP
13 ASKING ME THE SAME QUESTIONS AT DEPOSITIONS TIME
14 AFTER TIME.

15 Q WELL, I GUESS WE HAVE A LARGE COUNTRY, SIR
16 AND MAYBE NOT ALL OF THE ATTORNEYS HAVE SEEN YOU.
17 NOW, IN CONNECTION WITH YOUR TESTIFYING, HAVE
18 THERE BEEN OCCASIONS, SIR, WHEN YOU HAVE NOT BEEN
19 PERMITTED TO OFFER OPINIONS SUCH AS YOU'VE DONE
20 TODAY?

21 A YES.

22 Q AND, IN FACT, IN THE STATES OF CALIFORNIA,
23 ALABAMA, OKLAHOMA, FLORIDA, YOU HAVE BEEN
24 CURTAILED OR LIMITED IN YOUR OPINIONS, IS THAT
25 CORRECT, SIR?

1915

1

2 MR. HOUSTON: YOUR HONOR, I OBJECT TO THAT.
3 THAT CAN'T DO ANYTHING EXCEPT TRY TO CAST SOME
4 DOUBT ON THIS COURT'S RULING ON THE ADMISSABILITY
5 OF HIS TESTIMONY.

6

7 THE COURT: WHAT IS THE RELEVANCE, COUNSEL,
8 WHETHER IT'S --

9

10 MR. JOSEPHSON: YOUR HONOR, WE HAVE, AS THE
11 COURT'S AWARE, CONTENDED THAT THIS WITNESS IS NOT
12 QUALIFIED TO RENDER THE OPINIONS THAT HE HAS
13 RENDERED, AND ALL I'M TRYING TO DO IS TO
14 DEMONSTRATE THE FACT THAT HE HAS NOT ALWAYS BEEN
15 ABLE TO GIVE OPINIONS BECAUSE OF HIS LACK OF
16 EXPERTISE.

17

18 THE COURT: I WILL SUSTAIN THE OBJECTION.

19

20 BY MR. JOSEPHSON:

21 Q NOW, I HAD ASKED YOU ABOUT 1984 AND YOUR --
22 1984, THAT YOU HAD EARNED ABOUT NINETY PERCENT OF
23 YOUR INCOME FROM WORKING IN THE ASBESTOS
24 LITIGATION. WOULD THAT BE CORRECT?

25

A SOMETHING LIKE THAT. I PAID TAXES ON

1916

1 TWENTY-FIVE THOUSAND DOLLARS IN 1984.

2 Q YES, SIR. WOULD THE SAME BE TRUE FOR THE
3 GENERAL PERIOD FROM ABOUT 1981 TO 1985, THROUGH
4 1985, THAT SOMEWHERE BETWEEN EIGHTY TO NINETY
5 PERCENT OF YOUR INCOME ON A YEARLY BASIS IS
6 DERIVED FROM TESTIFYING IN THE ASBESTOS LITIGATION
7 OR PARTICIPATING IN IT?

8 A I DON'T HAVE SPECIFIC FIGURES. IT TENDED TO
9 INCREASE AS A PERCENT OF MY INCOME THE LONGER I
10 WAS IN SCHOOL BECAUSE I JUST WASN'T DOING TOO
11 MUCH BY WAY OF CONSULTING. I DID A LITTLE
12 CONSULTING FOR THE UNITED NATIONS AND THE WORLD
13 RESOURCES INSTITUTE AND THE INTERNATIONAL LABOR
14 OFFICE, BUT THIS WAS A RATHER -- YOU KNOW, IT
15 DIDN'T CONTRIBUTE HUGELY TO MY INCOME OVER THOSE
16 YEARS AND MOSTLY I WAS A STUDENT.

17 Q YES, SIR. AND WERE THERE OCCASIONS WHEN YOU
18 SOUGHT PERMISSION AT JOHNS-HOPKINS TO LEAVE
19 SCHOOL OR TAKE LEAVES FROM SCHOOL SO THAT YOU
20 COULD GO AND TESTIFY? YOU TOOK A SEMESTER OFF
21 ONE YEAR, DID YOU NOT, SIR, SO YOU COULD
22 PARTICIPATE IN THE ASBESTOS LITIGATION?

23 A NO. THAT WASN'T THE REASON I TOOK THE
24 SEMESTER OFF. IT HAD TO DO WITH THE TUITION
25 CHARGES. THE COST OF TUITION AT THE SCHOOL IS

1 RATHER HIGH, JOHNS-HOPKINS BEING A PRIVATE
2 UNIVERSITY. THERE WERE CHARGING ABOUT SEVEN OR
3 EIGHT THOUSAND DOLLARS A YEAR, AND IN ORDER TO
4 REDUCE THE TUITION CHARGES DURING THE PERIOD
5 WHERE THEY WEREN'T OFFERING ANY COURSES I WAS
6 INTERESTED IN TAKING ANYWAY, I ARRANGED TO TAKE
7 SOME KIND OF A LEAVE OF ABSENCE OR, I FORGET
8 EXACTLY WHAT IT WAS CALLED, FOR A VERY BRIEF
9 PERIOD MAINLY FOR FINANCIAL REASONS. IT HAD
10 NOTHING TO DO WITH ASBESTOS LITIGATION.

11 Q AND DID YOU TESTIFY DURING THAT PERIOD OF
12 TIME OR PARTICIPATE IN THE ASBESTOS LITIGATION
13 PROCESS IN 1981, SIR?

14 A PROBABLY. I MEAN, THIS IS JUST SOMETHING
15 THAT'S BEEN GOING ON FOR SEVEN YEARS.

16 Q AND I DON'T MEAN TO BELABOR THE POINT,
17 DOCTOR, BUT AT THE MEETINGS OF THE ASBESTOS
18 LITIGATION GROUP, HAVE YOU INDICATED TO THE
19 GROUP, TO THE PLAINTIFF'S ATTORNEYS THAT YOU ARE
20 READY AND WILLING TO COME TO TESTIFY IN THEIR
21 CASES AND TO PARTICIPATE IN THEIR CASES AND
22 ADVISE THEM OF WHAT YOUR SERVICES ARE AND WHAT
23 THE COSTS ARE?

24 A WELL, IT DEPENDED ON THE ATTORNEYS AND THE
25 CONDITIONS. I WASN'T JUST -- I'VE NEVER

1 ADVERTISED MY SERVICES IN ANY KIND OF WAY. I'VE
2 NEVER PAID FOR AN ADVERTISEMENT, AND I'VE ALWAYS
3 BEEN -- I'VE ALWAYS WANTED TO BE MY OWN MAN. I
4 WORK FOR PEOPLE ON TERMS WHICH ARE MUTUALLY
5 ACCEPTABLE. IF I CAN'T GET ALONG WITH THEM OR IF
6 THE TERMS AREN'T RIGHT -- I CERTAINLY DON'T COME
7 AND TESTIFY THE THINGS THAT LAWYERS TELL ME TO
8 SAY IF I DON'T BELIEVE IN THOSE THINGS IN THE
9 FIRST PLACE AND SO ON. THAT'S WHY I'M AN
10 INDEPENDANT CONSULTANT.

11 Q DR. CASTLEMAN, IS IT ALSO CORRECT THAT A
12 NUMBER OF THE DOCUMENTS RELATING TO VARIOUS
13 COMPANIES WHO WERE IN THE ASBESTOS BUSINESS WERE
14 GIVEN TO YOU OR PARTS OF THEM WERE GIVEN TO YOU
15 BY PLAINTIFF'S ATTORNEYS AS OPPOSED TO YOU
16 FINDING THEM YOURSELF?

17 A YES. I'VE EVEN GOTTEN DOCUMENTS FROM
18 DEFENSE ATTORNEYS, TOO, WHICH ARE -- I'M GRATEFUL
19 FOR ANY KIND OF DOCUMENTATION FROM ANY SOURCE.

20 Q AND YOU HAVE NOW, I BELIEVE, WRITTEN A BOOK,
21 IS THAT CORRECT?

22 A YES.

23

24

25

1919

1 BY MR. JOSEPHSON:

2 Q AND YOUR BOOK DEALS WITH ASBESTOS MEDICAL
3 AND LEGAL ASPECTS?

4 A THAT'S WHAT IT'S CALLED.

5 Q NOW, THIS BOOK IS PRIMARILY A BOOK FOR
6 ATTORNEYS, IS IT NOT, ON HOW TO PREPARE AND GET
7 AN ASBESTOS CASE READY?

8 A I DON'T TELL ATTORNEYS HOW TO PREPARE THEIR
9 CASES. I'M NOT AN ATTORNEY, AND I DON'T PURPORT
10 TO KNOW HOW TO TELL ATTORNEYS HOW TO PREPARE
11 THEIR CASES.

12 Q YES, SIR. IN FACT, DOESN'T YOUR -- ISN'T IT
13 ADVERTISED AS A BOOK TO ATTORNEYS IN ASBESTOS
14 LITIGATION, "THIS BOOK OFFERS A DOCUMENTATION ON
15 THE DEVELOPMENT OF KNOWLEDGE ABOUT ASBESTOS
16 HAZARD, THERE IS AN ABUNDANCE OF VALUABLE
17 MATERIAL FOR THE PLAINTIFF AND THE ATTORNEY
18 PREPARING HIS CASE, AS WELL AS INFORMATION ON HOW
19 TO DEAL WITH DEFENSE ARGUMENTS", ISN'T THAT HOW
20 YOUR BOOK IS ADVERTISED?

21 A I KNOW. I WROTE THE BOOK, THE PUBLISHER
22 WROTE THE ADVERTISING. I ARGUED WITH THE
23 PUBLISHER ABOUT THAT LANGUAGE. I THOUGHT THAT
24 WAS DEMEANING TO THE BOOK. I LOST THE ARGUMENT.
25 THEY TOLD ME THEY OWN IT.

1920

1 Q YES, SIR. AND WHAT DOES YOUR ASBESTOS BOOK
2 SELL FOR, A COPY?

3 A SIXTY DOLLARS.

4 Q I TAKE IT THEN THAT, AT LEAST INSOFAR AS THE
5 ARGUMENT WAS CONCERNED, AS FAR AS YOU KNOW, AFTER
6 YOUR PUBLISHER REVIEWED THE BOOK AND DISCUSSED IT
7 WITH YOU, A CHOICE WAS MADE APPARENTLY TO
8 ADVERTISE IT PRIMARILY NOT AS A BOOK OF SCIENCE,
9 BUT AS A BOOK TO ATTORNEYS, PLAINTIFFS ATTORNEYS,
10 PREPARING THEIR CASE, AS WELL AS INFORMATION ON
11 HOW TO DEAL WITH DEFENSE ARGUMENTS, IS THAT
12 CORRECT?

13 A THAT'S WHAT THE PRESIDENT OF THE PUBLISHING
14 COMPANY CHOSE TO USE. HE TOLD ME THAT HE HAD NOT
15 READ THE BOOK AT THE TIME THAT HE SELECTED THAT
16 LANGUAGE.

17 Q AND IN FACT, INSIDE THE BOOK THERE ARE A
18 NUMBER OF PLAINTIFF'S ATTORNEYS WHO HAVE HELPED
19 YOU OVER THE YEARS AND WHO YOU ACKNOWLEDGE AMONG
20 THE ACKNOWLEDGEMENTS, IS THAT CORRECT?

21 A YES, THEY HAD PROVIDED DOCUMENTATION WHICH
22 WAS VERY HELPFUL TO ME, INCLUDING DEPOSITIONS,
23 TRIAL TRANSCRIPTS, AND OTHER THINGS THAT I HAD NO
24 OTHER WAY OF GETTING.

25 Q YES, SIR. NOW, IN CONNECTION WITH THE CASE

1921

1 AT HAND, WITH RESPECT TO MR. HOUSTON, IS IT
2 CORRECT THAT YOU 'VE WORKED FOR HIM ON A NUMBER OF
3 OCCASIONS?

4 A ONE OR TWO.

5 Q WELL, IT'S MORE THAN ONE OR TWO, IS IT NOT?

6 A WELL, HE MAY HAVE LISTED ME IN A LOT OF
7 CASES, BUT I HAVEN'T COME DOWN HERE THAT OFTEN.

8 Q AND HAVE YOU WORKED FOR MR. BALDWIN BEFORE?

9 A ONCE, ON ONE CASE.

10 Q AND MR. THOMPSON AND MR. UMPHREY WHO WERE
11 HERE, HAVE YOU WORKED FOR THEM?

12 A I WORKED FOR MR. UMPHREY BRIEFLY IN DOING
13 RESEARCH BACK IN 1977. I'VE ALSO BEEN LISTED IN
14 SOME OF HIS CASES, BUT I'VE NEVER TESTIFIED IN
15 ANY TRIAL FOR HIM, OR WITH HIM.

16 Q AND WOULD IT BE CORRECT, SIR, TO STATE THAT
17 WHAT YOU 'VE DONE IN THIS BOOK IS TO TRY TO
18 PRESENT THE PLAINTIFF'S PERSPECTIVE ON THE
19 ASBESTOS LITIGATION?

20 A I'VE PRESENTED THE GLOBAL PERSPECTIVE ON THE
21 HISTORY OF THE KNOWLEDGE ABOUT ASBESTOS DISEASE
22 FROM THE STANDPOINT OF OCCUPATIONAL STANDARDS,
23 FROM THE STANDPOINT OF COMPENSATION, FROM THE
24 STANDPOINT OF ARTICLES ON ASBESTOSIS, ARTICLES ON
25 CANCER. THERE ARE THOUSANDS OF CITATIONS IN

1922

1 THERE. IT HAS NOT BEEN CRITICIZED FOR
2 INCOMPLETENESS.

3 THE PUBLISHER HAS NOT RECEIVED A SINGLE
4 LETTER FROM ANY PARTY CHARGING THAT THAT BOOK IS
5 SO UNFAIR AS TO WARRANT EVEN A THOUGHT OF LEGAL
6 ACTION. CONSIDERING THE PARTIES DISCUSSED IN
7 THAT BOOK I FIND THAT REMARKABLE. AND THE BOOK
8 HAS CONSTITUTED THE MAIN BASIS FOR BY DOCTORAL
9 DISSERTATION, WITH WHICH IT IS LARGELY IDENTICAL,
10 AND THAT DOCTORAL DISSERTATION HAS BEEN ACCEPTED
11 BY THE JOHNS-HOPKINS SCHOOL OF HYGIENE AND PUBLIC
12 HEALTH.

13 Q DID YOU SEND THE BOOK OUT TO SOME OF THE
14 PLAINTIFFS' ATTORNEYS BEFORE IT WAS PUBLISHED FOR
15 REVIEW?

16 A ONE OR TWO.

17 Q HOW MANY OF THE COMPANIES DID YOU SEND YOUR
18 BOOK TO FOR REVIEW BEFORE IT WAS PUBLISHED?

19 A I FIGURED THEY COULD AFFORD TO BUY IT AFTER
20 IT WAS PUBLISHED.

21 Q YES, SIR. AND MANY OF THEM HAVE, HAVEN'T
22 THEY?

23 A YES.

24 Q BECAUSE THE PRIMARY SALES OF YOUR BOOK, IF
25 NOT THE ONLY SALES OF YOUR BOOK, HAVE BEEN IN THE

1 LEGAL COMMUNITY --

2 A WELL --

3 Q -- WOULDN'T THAT BE CORRECT?

4 A WELL, CONSIDERING THE NUMBER OF LAWYERS
5 INVOLVED IN ASBESTOS LITIGATION, THAT'S BEEN THE
6 PRIMARY SALES, BUT BY NO MEANS THE ONLY SALES.
7 MEDICAL LIBRARIES, LAW LIBRARIES, MEDICAL
8 SCHOOLS, PUBLIC HEALTH SCHOOLS.

9 Q ONE OF THE PEOPLE THAT YOU HAVE ACKNOWLEDGED
10 IN YOUR ACKNOWLEDGMENT SECTION IS A GENTLEMAN BY
11 THE NAME OF DR. GARRETT SCHEPERS, IS THAT
12 CORRECT?

13 A YES.

14 Q IS THAT SOMEONE WHOSE OPINION YOU RESPECT?

15 A YES.

16 Q IS THAT SOMEONE WHO YOU CONSIDER AN
17 AUTHORITY ON ASBESTOS AND ASBESTOSIS?

18 A THAT'S SOMEONE I CONSIDER KNOWLEDGEABLE
19 ABOUT WHAT HAPPENED ABOUT THE PROBLEMS OF
20 ASBESTOS DISEASE MANY YEARS AGO. I CONSIDER HIS
21 EXPERIENCES VALUABLE, NOT NECESSARILY HIS
22 OPINIONS --

23 Q YES, SIR.

24 A - PUBLISHED IN THE LITERATURE.

25 Q DR. SCHEPERS HAS ALSO TESTIFIED IN A NUMBER

1 OF CASES ON BEHALF OF PLAINTIFFS AS YOU HAVE, HAS
2 HE NOT, SIR?

3 A SO I UNDERSTAND. HE USED TO WORK FOR
4 INDUSTRY.

5 Q YES, HE DID. AND HE WORKED AT THE SARANAC
6 LABORATORIES, TOO, HE WAS THE DIRECTOR, WAS HE
7 NOT?

8 A YES.

9 Q AND EVEN THOUGH HE WORKED AT SARANAC, AS DID
10 DR. GARDNER AND DR. VORWALD, YOU DON'T CONSIDER
11 HIM A CREATURE OF INDUSTRY, DO YOU?

12 A WELL, I BELIEVE HE MAY HAVE BEEN AT ONE
13 TIME.

14 Q WAS HE A CREATURE OF INDUSTRY IN 1964?

15 A I DON'T REALLY THINK THOSE ARE THE KINDS OF
16 TERMS THAT YOU CAN DESCRIBE PEOPLE WITH AS WELL
17 AS YOU CAN DESCRIBE ORGANIZATIONS LIKE THE
18 INDUSTRIAL HYGIENE FOUNDATION.

19 Q WELL, DR. SCHEPERS WASN'T WORKING FOR THE
20 INDUSTRIAL HYGIENE FOUNDATION IN 1964, WAS HE,
21 SIR?

22 A NO. BY THAT TIME I BELIEVE HE WAS WORKING
23 FOR THE U.S. GOVERNMENT.

24 Q SO, HE WOULD NOT HAVE BEEN A CREATURE OF
25 INDUSTRY?

1925

1 A NOT IN TERMS OF HIS EMPLOYMENT, PERHAPS
2 MAYBE HIS OUTLOOK SOMEWHAT.

3 Q THAT'S THE SAME DR. SCHEPERS WHO YOU SHOWED
4 MEMOS SPEAKING BEFORE THE ASBESTOS TEXTILE
5 INSTITUTE IN 1955 AND 1956, TALKING ABOUT THE
6 DANGERS OF CANCER AND ASBESTOS?

7 A YES. HE WAS TRUSTED ENOUGH TO BE INVITED TO
8 THE TRADE ASSOCIATION AT THAT TIME.

9 Q SO, HE WOULD HAVE BEEN SUSPECT AT THAT TIME,
10 EVEN THOUGH HE WAS DELIVERING THE MESSAGE WHICH
11 WAS PUT BEFORE THE JURY?

12 A HE WAS SUSPECT ENOUGH SO THAT THEY DIDN'T
13 GIVE HIM ANY CONTRACTS.

14 Q HAVE YOU HAD A CHANCE OR OCCASION TO READ
15 THE PUBLICATION BY DR. GARRETT SCHEPERS, WHOSE
16 CONTRIBUTION TO YOUR WORK YOU ACKNOWLEDGE,
17 ENTITLED, "ASBESTOSIS", JANUARY, 1964, PUBLISHED
18 IN "DISEASES OF THE CHEST"?

19 A I DON'T RECALL SPECIFICALLY WHAT WAS IN THAT
20 ARTICLE. I'VE HEARD OF ARTICLES HE WROTE AROUND
21 THAT TIME.

22 Q WELL, LET ME JUST ASK YOU ABOUT THIS, I'LL
23 PUT THIS UP LATER, BECAUSE I'VE GOT A LOT OF
24 THINGS TO COVER, BUT DO YOU RECALL BEING ASKED
25 QUESTIONS ABOUT WHETHER IT WOULD HAVE BEEN FALSE

1 AND MISLEADING TO LABEL ASBESTOS AS NONTOXIC IN
2 1952 OR IN 1960, BASED UPON WHAT WAS KNOWN ABOUT
3 IT?

4 A YES.

5 Q AND DO YOU RECALL TESTIFYING THAT TO DO SO
6 WAS MISLEADING?

7 A YES.

8 Q FALSE?

9 A WORDS TO TO THAT EFFECT.

10 Q YES, SIR. AND WERE YOU AWARE OF THE FACT
11 THAT IN 1964, THE SAME YEAR OF DR. SELIKOFF'S
12 WORK, IN AN ARTICLE ENTITLED "ASBESTOSIS", THAT
13 DR. GARRETT SCHEPERS STATED, "ASBESTOS IS NOT
14 CURRENTLY CONSIDERED A TOXIC SUBSTANCE, SINCE IT
15 DOES NOT PRODUCE SYSTEMIC POISONING", WERE YOU
16 FAMILIAR WITH THAT QUOTE, SIR?

17 A NO. BUT, I MEAN, HE'S JUST SAYING THAT
18 TECHNICALLY THE WAY ASBESTOS KILLS YOU ISN'T
19 REFERRED TO AS TOXICITY, IT'S CALLED FIBROSIS, OR
20 SOMETHING LIKE THAT. IT'S A MATTER OF SEMANTICS.

21 TO WRITE A PUBLICATION IN A TRADE MAGAZINE
22 AS OPPOSED TO A MEDICAL ARTICLE, THE USE OF THE
23 CHARACTERIZATION NONTOXIC IS GROSSLY MISLEADING.

24 Q YES, SIR. BUT AS USED AS A MEDICAL TERM,
25 ASBESTOS IS NOT THEN AND IS NOT NOW TOXIC, IS IT,

1927

1 SIR?

2 A IN THE GENERAL COMMON SENSE OF THE WORD,

3 ASBESTOS IS TOXIC.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q IN THE MEDICAL SENSE OF THE WORD AS WE SIT
2 HERE TODAY IN 1986, ASBESTOS MEDICALLY IS DEFINED
3 AS NONTOXIC, IS IT NOT, SIR, OR DO YOU KNOW?

4 A I DON'T THINK IT'S DEFINED AS NONTOXIC. YOU
5 LOOK UP THE WORD "TOXIC" IN DICTIONARIES, AND YOU
6 CAN DEFINE IT -- YOU CAN INCLUDE IT OR NOT
7 INCLUDE IT DEPENDING ON WHICH DEFINITION YOU
8 CHOOSE. "TOXIC" MEANS HARMFUL TO YOU IF YOU GET
9 IT IN YOUR BODY. I'M SURE THE DICTIONARY SAYS
10 THAT.

11 Q NOW, YOU HAVE WORKED FOR AN INDIVIDUAL, AN
12 ATTORNEY ALSO IN TEXAS BY THE NAME OF FRED
13 BARREN. IS THAT CORRECT?

14 A YES.

15 Q AND WHEN YOU -- HE'S AN ATTORNEY OVER IN
16 DALLAS?

17 A YES.

18 Q WHEN YOU WORKED FOR HIM, WAS YOUR JOB TO BE
19 THE MEDICAL LIBRARIAN OR RESEARCHER?

20 A I WAS HIRED AS A CONSULTANT.

21 Q WAS YOUR PRIMARY FUNCTION THAT AS A
22 LIBRARIAN OR RESEARCHER?

23 A I HAVE NEVER WORKED AS A LIBRARIAN. I HAVE
24 BEEN CALLED A LIBRARIAN IN COURTROOMS ALL OVER
25 THE UNITED STATES, BUT I HAVE NEVER REALLY WORKED

1 AS A LIBRARIAN. I'M NOT QUALIFIED AS A
2 LIBRARIAN, SIR.

3 Q NOW, I WANT TO GO ON AND I WANT TO ASK YOU
4 SOME QUESTIONS ABOUT SOME OF THE DOCUMENTS THAT
5 YOU'VE BROUGHT BEFORE US AND SOME OF THE WORK
6 THAT YOU'VE DONE, BUT BEFORE I DO THAT WHAT I
7 WOULD LIKE TO DO IS TO GET SOME BASIC BACKGROUND
8 ON YOU REGARDING YOUR QUALIFICATIONS TO TESTIFY
9 IN CERTAIN AREAS. HAVE YOU EVER TESTIFIED BEFORE
10 AS A TOXICOLOGIST?

11 A NO.

12 Q HAVE YOU EVER TESTIFIED BEFORE AS AN
13 EPIDEMIOLOGIST?

14 A NO.

15 Q HAVE YOU -- AND YOU'VE TESTIFIED THAT YOU'RE
16 NOT A MEDICAL DOCTOR?

17 A THAT'S TRUE. I MEAN, I HAVE NOT TESTIFIED
18 ON ANY OF THOSE SPECIALTIES IN COURTS, COURTS
19 BEING RATHER STRICT ABOUT WHAT THEY CONSIDER
20 QUALIFICATIONS AND TESTIMONY TO BE.

21 Q YES, SIR. THEN YOU ARE HERE AS AN EXPERT.
22 ARE YOU NOT, AS SOMETHING CALLED AN EXPERT ON THE
23 STATE OF CORPORATE KNOWLEDGE?

24 A IN THIS PARTICULAR COURT, I AM. IN THIS
25 PARTICULAR TRIAL, I AM.

1930

1 Q YES, SIR. AND THAT'S NOT SOMETHING THAT HAS
2 ANYTHING TO DO WITH GETTING A DEGREE AS A DOCTOR
3 OF SCIENCE, IS IT, SIR?

4 A IT IS IF YOUR DOCTORAL DISSERTATION IS
5 CALLED "ASBESTOS, AN HISTORICAL CASE STUDY OF
6 CORPORATE RESPONSE TO AN INDUSTRIAL HEALTH
7 HAZARD."

8 Q YES, SIR. THERE IS NO COURSE ON THE STUDY
9 OF STATE OF MIND OF CORPORATE ORGANIZATIONS, IS
10 THERE, SIR?

11 A THERE PROBABLY IS IN BUSINESS SCHOOLS.

12 Q BUT NOT IN ANY OF THE SCHOOLS YOU'VE GONE
13 TO?

14 A NO. I HAVEN'T STUDIED BUSINESS PER SE.
15 I'VE STUDIED PUBLIC HEALTH.

16 Q NOW, WHILE YOU'RE AN ENGINEER, YOU'VE NEVER
17 BEEN A REGISTERED PROFESSIONAL ENGINEER, HAVE
18 YOU, SIR?

19 A NO.

20 Q AND YOU DON'T HAVE ANY EXPERTISE OR ANALYSIS
21 IN MAKING A DIAGNOSIS AS TO WHETHER SOMEONE'S
22 CONDITION WAS RELATED TO ASBESTOS EXPOSURE OR
23 NOT?

24 A I DON'T PRACTICE MEDICINE WITHOUT A LICENSE,
25 NO.

1931

1 Q AND YOU PERSONALLY HAVE NEVER DONE ANY WORK
2 WITH ASBESTOS-CONTAINING MATERIALS SUCH AS ARE
3 BEING DISCUSSED TODAY?

4 A I WORKED IN THE CHEMICAL PLANT WHERE THERE
5 WAS ASBESTOS INSULATION ALL AROUND. WE WERE
6 CONSTANTLY REDESIGNING THE PIPING IN THE PLANT,
7 TAKING OFF INSULATION, REARRANGING THE PIPING,
8 WORKING IN SAMPLE PREPARATIONS. ONE WAS
9 CONSTANTLY REARRANGING THE EQUIPMENT. I'M SURE I
10 WAS EXPOSED TO ASBESTOS IN THAT JOB. I'M SURE I
11 HAD MY HANDS ON ASBESTOS MATERIALS ON THAT JOB.

12 Q THAT WASN'T MY QUESTION, DOCTOR. MY
13 QUESTION WAS DID YOU EVER WORK AS ANY PART OF ANY
14 JOB THAT YOU EVER DID WITH ASBESTOS INSULATION
15 MATERIALS?

16 A I THOUGHT I ANSWERED YOUR QUESTION, BUT I
17 CAN'T ADD TO WHAT I'VE ALREADY SAID.

18 Q NOW, THERE'S ALSO A FORMAL TRAINING AS A
19 HISTORIAN, IS THERE NOT?

20 A WELL, THERE ARE SCHOOLS, YES. SCHOOLS GIVE
21 DEGREES IN HISTORY. LIKE, THERE ARE DEPARTMENTS
22 OF HISTORY.

23 Q AND YOU HAVEN'T GONE THROUGH ANY OF THAT
24 KIND OF FORMAL TRAINING?

25 A NO.

1 Q NOW, WHEN YOU BECOME AN EXPERT ON CORPORATE
2 STATE OF KNOWLEDGE, WOULD YOU AGREE WITH ME THAT
3 BEFORE YOU FORM OPINIONS, WHETHER ORALLY OR IN
4 WRITING, THAT IT'S INCUMBENT UPON ANY PERSON SUCH
5 AS YOURSELF TO REVIEW AND ANALYZE ALL OF THE
6 DOCUMENTATION AVAILABLE?

7 A THIS I HAVE TRIED TO DO.

8 Q YES, SIR. AND ONE WHO PULLS THINGS OUT OF
9 CONTEXT OR DOESN'T BOTHER TO REVIEW ALL OF THE
10 DOCUMENTS BEFORE ONE FORMS AN OPINION WOULD NOT
11 BE DOING HIS JOB AS A HISTORIAN OR AN EXPERT ON
12 THE STATE OF CORPORATE KNOWLEDGE, WOULD HE, SIR?

13 A IT'S IMPOSSIBLE TO REVIEW ALL THE DOCUMENTS.
14 ONE REVIEWS ALL THE DOCUMENTS THAT ONE CAN GET.
15 I'M WELL AWARE OF THE MOST PROMINENT DOCUMENTS
16 THAT HAVE BEEN INTRODUCED BY BOTH PLAINTIFFS AND
17 DEFENDANTS IN THE HISTORY OF THE ASBESTOS
18 LITIGATION. I GET CROSS-EXAMINED WITH DOCUMENTS.
19 IF THEY'RE NOT BROUGHT INTO THE COURTROOM BY
20 PLAINTIFFS, I GET CROSS-EXAMINED WITH THEM BY THE
21 DEFENDANTS. SO, ONE WAY OR THE OTHER I HAVE AN
22 OPPORTUNITY TO SEE THE MAIN DOCUMENTATION THAT
23 EXISTS.

24 Q YES, SIR. IN OTHER WORDS, YOU KNOW, FOR
25 INSTANCE, TODAY BASED ON PAST EXPERIENCE THAT

1 OTHER DEFENDANTS WILL BE TAKING DOCUMENTS WHICH
2 YOU DID NOT CHOOSE TO BRING OUT WHEN YOU WERE
3 TELLING YOUR STORY AND ASK YOU QUESTIONS ABOUT
4 THOSE DOCUMENTS, BASED ON PAST EXPERIENCE, ISN'T
5 THAT CORRECT, SIR?

6 A QUITE LIKELY. I MEAN, WE HAVEN'T OBVIOUSLY
7 DISCUSSED EVERY SINGLE PIECE OF DOCUMENTATION
8 THAT'S COME OUT --

9 Q YES, SIR.

10 A -- IN THE LAST, WHAT DAY OR DAY AND A HALF
11 OR TWO.

12 Q AND YOU ALSO KNOW, DO YOU NOT, SIR, THAT THE
13 ISSUE IN THIS CASE IS NOT WHETHER ASBESTOS CAUSES
14 ASBESTOSIS OR WHETHER ASBESTOS CAUSES LUNG
15 CANCER. YOU'RE AWARE OF THAT, ARE YOU NOT, SIR?

16 A WELL, PERHAPS YOU CAN EXPLAIN WHAT YOU MEAN.
17 OKAY. I MEAN, THE ISSUE OF ASBESTOS CAUSING
18 DISEASE IS NOT DISPUTED. THAT'S WHAT YOU'RE
19 SAYING?

20 Q YOU UNDERSTAND THAT?

21 A I UNDERSTAND THAT IT'S NOT DISPUTED TODAY.

22 Q I WANT TO ASK YOU --

23

24 MR. HOUSTON: IN VIEW OF THAT QUESTION,
25 COUNSEL, MAY I ASK, HAVE YOU CHANGED --

1

2 THE COURT: THAT'S NOT APPROPRIATE AT THIS
3 TIME, MR. HOUSTON, IF I ANTICIPATE WHERE YOU'RE
4 GOING. I SUGGEST WE DISCUSS IT OUTSIDE THE
5 PRESENCE OF THE JURY.

6

7 MR. HOUSTON: THAT'S FINE. I WAS GOING TO
8 APPROACH THE BENCH, YOUR HONOR.

9

10 BY MR. JOSEPHSON:

11 Q I WANT TO ASK YOU, IF I MIGHT, ABOUT SOME OF
12 THE COMPANIES WHO ARE ON YOUR CHART AND SOME WHO
13 AREN'T, WHO YOU DIDN'T DISCUSS, TO GET YOUR VIEWS
14 ON THOSE COMPANIES, IF I MIGHT, SIR. FOR
15 INSTANCE, G.A.F. RUBEROID. DO YOU SEE THEM ON
16 THIS CHART?

17 A NO. BUT I WOULD BE HAPPY TO TICK OFF THE
18 THINGS THAT RELATE TO THEM.

19 Q I THINK IT IS ON THE CHART. DO YOU SEE
20 THAT?

21 A OH, YES.

22 Q OKAY. JUST LET ME ASK YOU THIS. WERE THEY
23 PART OF THE ASBESTOS CONSPIRACY THAT YOU'VE
24 DESCRIBED, AMONG INDUSTRY?

25 A THE CONSPIRACY OF SILENCE?

1935

1 Q YES.

2 A YES.

3 Q OKAY. AND RAYMARK, WHO IS NOT A DEFENDANT
4 IN THIS CASE, RAYMARK OR RAYBESTOS-MANHATTAN,
5 THEY SEEM TO HAVE -- THEY AND JOHNS-MANVILLE SEEM
6 TO HAVE MOST OF THE CHECKS. WOULD RAYMARK HAVE
7 BEEN AN ACTIVE PARTICIPANT IN THE CONSPIRACY OF
8 SILENCE OR WHATEVER THE CONSPIRACIES THAT YOU
9 ENUMERATED WERE, SIR?

10 A YES, SIR.

11 Q OKAY. AND JOHNS-MANVILLE I TAKE IT WOULD
12 HAVE BEEN IN ALL THE CONSPIRACIES?

13 A WELL, JOHNS-MANVILLE WAS A DOMINANT MEMBER
14 OF THIS SCENARIO, YES.

15 Q YES. THEY WERE THE DOMINANT AND LARGEST
16 MEMBER OF THIS INDUSTRY, CORRECT?

17 A I SAID A DOMINANT MEMBER.

18 Q THE LARGEST MEMBER, WERE THEY NOT, SIR?

19 A I BELIEVE THEY HAD THE LARGEST INVESTMENT IN
20 ASBESTOS, BUT THEY WERE BY NO MEANS THE LARGEST
21 CORPORATION INVOLVED. OWENS-ILLINOIS, FOR
22 EXAMPLE, IS LARGER THAN JOHNS-MANVILLE.

23 Q YES, SIR. BUT OWENS-ILLINOIS, AS YOU KNOW
24 FROM YOUR HISTORY, WAS ONLY IN THE ASBESTOS
25 BUSINESS FOR APPROXIMATELY -- ASBESTOS -- MADE

1936

1 ONE PRODUCT WITH ASBESTOS FOR A TEN YEAR PERIOD,
2 IS THAT CORRECT, 1948 TO 1958?

3 A WELL, THEIR INTERESTS SPANNED FIFTEEN YEARS
4 COUNTING THE EARLIEST CONTACT WITH SARANAC IN
5 1943, AND, OF COURSE, THEIR KNOWLEDGE ABOUT
6 ASBESTOS GOES BACK BEFORE THAT.

7 Q THEY WERE IN THE ASBESTOS -- THEY
8 MANUFACTURED A PRODUCT WHICH CONTAINED ASBESTOS
9 FROM 1948 TO 1958, DID THEY NOT, DOCTOR?

10 A I'M SURE THEY DID.

11 Q AND THAT WAS THE ONE AND ONLY PRODUCT AND
12 ONE AND ONLY TIME THAT THEY WERE IN THE BUSINESS
13 OF MANUFACTURING COMMERCIALLY PRODUCTS THAT
14 CONTAINED ASBESTOS, IS IT NOT, SIR, FROM YOUR
15 STUDY, YOUR INTIMATE STUDY OF CORPORATE
16 KNOWLEDGE?

17 A I BELIEVE THAT'S TRUE.

18 Q SO, WHEN YOU SAY THEY WERE LARGER THAN
19 JOHNS-MANVILLE, THEY WERE PRIMARILY A GLASS AND
20 BOTTLING COMPANY, WERE THEY NOT, SIR?

21 A YES. BUT THEY HAD THE ACCESS TO KNOWLEDGE
22 THAT COMES WITH BEING LARGE.

23 Q NOT TALKING ABOUT THAT, SIR. WHEN YOU SAID
24 THEY WERE A LARGE COMPANY, THEY WERE A LARGE
25 COMPANY AND THEIR PRIMARY INTEREST WERE IN THE

1937

1 GLASS AND BOTTLING BUSINESS, IS THAT CORRECT,
2 SIR.

3 A YES.

4 Q WHERE IS JOHNS-MANVILLE'S PRIMARY INTEREST,
5 PRIMARY INVESTMENT AS YOU PUT IT, PRIMARY
6 ACTIVITY WAS IN THE ASBESTOS MINING,
7 MANUFACTURING, DISTRIBUTION OF INSULATION, IS
8 THAT CORRECT?

9 A INSULATION AND OTHER PRODUCTS WITH ASBESTOS,
10 YES, INITIALLY. I MEAN, THEY ALL DIVERSIFIED
11 SOMEWHAT AFTER A TIME. JOHNS-MANVILLE BECAME
12 QUITE A DIVERSIFIED COMPANY.

13 Q YES. SIR. AND RAYMARK WAS CALLED
14 RAYBESTOS-MANHATTAN, IS THAT --

15 A RIGHT.

16 Q BACK UP UNTIL THE 1960'S, IS THAT CORRECT?

17 A MORE RECENTLY THAN THAT, YES.

18 Q AND YOU CHARACTERIZED RAYMARK AND
19 JOHNS-MANVILLE AS THE TWO MAJOR PLAYERS IN THE
20 ASBESTOS LITIGATION -- IN THE ASBESTOS INDUSTRY,
21 AS YOU CALL IT, IS THAT CORRECT?

22 A THEY WERE IN THE 1930'S, YES.

23

24 *

25

1 BY MR. JOSEPHSON:

2 Q AND RAYMARK CONTINUED IN THE ASBESTOS
3 INDUSTRY AS YOU'VE CALLED IT ALL THE WAY UP UNTIL
4 THE 1970'S, DID THEY NOT, SIR?

5 A YES. I MEAN, THEY STILL MANUFACTURE
6 PRODUCTS CONTAINING ASBESTOS TODAY. THAT'S BY NO
7 MEANS THEIR SOLE LINE OF BUSINESS.

8 Q BUT UP UNTIL AND THROUGH THE 1960'S ASBESTOS
9 PRODUCTS WERE IN FACT THE BULK OF THE BUSINESS OF
10 RAYBESTOS-MANHATTAN, WERE THEY NOT, SIR?

11 A THAT'S RIGHT.

12 Q AND --

13 A OR AT LEAST THAT'S MY UNDERSTANDING.

14 Q AND ANOTHER ONE OF THE BIG PLAYERS THAT
15 YOU'VE MENTIONED, ONE OF THE MAJOR PLAYERS I
16 THINK YOU'VE CHARACTERIZED THEM AS, WAS A COMPANY
17 WHICH IS NOW KNOWN AS NICOLET, BUT WHICH IN THE
18 PAST WAS CALLED KEASBY-MATTISON. THEY'RE NOT ON
19 THIS CHART, ARE THEY?

20 A NO.

21 Q BUT YOU HAVE DESCRIBED THEM IN NUMEROUS
22 DOCUMENTS, HAVE YOU NOT?

23 A YES.

24 Q AND WOULD YOU AGREE WITH ME THAT
25 KEASBY-MATTISON, NOW KNOWN AS NICOLET, WAS A

1 MAJOR PLAYER IN THE ASBESTOS INDUSTRY?

2 A YES.

3 Q NOW --

4 A THAT'S MY UNDERSTANDING.

5 Q YES, SIR. WE WERE TALKING ABOUT GAF
6 RUBEROID. GAF RUBEROID, WHICH IS NOT A DEFENDANT
7 IN THIS CASE, IS ALSO A -- WAS ALSO A -- RUBEROID
8 WAS ALSO A MAJOR PLAYER IN THE ASBESTOS
9 INDUSTRY, AS YOU PUT IT, IS THAT CORRECT?

10 A YES. THAT'S MY UNDERSTANDING.

11 Q AND ARE YOU FAMILIAR WITH A COMPANY CALLED
12 COMBUSTION ENGINEERING?

13 A YES.

14 Q AND WERE THEY ALSO IN THE BUSINESS OF
15 MANUFACTURING PRODUCTS CONTAINING ASBESTOS?

16 A YES, THEY WERE.

17 Q AND THEY WENT UNDER THE NAME, I THINK, OF
18 DETRICH FOR A WHILE, OR THEY BOUGHT A COMPANY
19 CALLED DETRICH WHICH MADE ASBESTOS INSULATION, IS
20 THAT CORRECT, SIR?

21 A I DON'T REMEMBER OFFHAND. I GATHER THEIR
22 ROLE IN THE INDUSTRY WAS NOT SUCH A LARGE ROLE.

23 Q BUT THEY WERE ANOTHER COMPANY IN THIS
24 ASBESTOS INDUSTRY AS YOU'VE CALLED IT?

25 A YES.

1940

1 Q AND THEN CAN WE AGREE THAT WE HAVE
2 IDENTIFIED AT LEAST JOHNS-MANVILLE, RAYMARK,
3 KEASBY-MATTISON, OR NICOLET, GAF RUBEROID,
4 COMBUSTION ENGINEERING AS PLAYERS IN THE ASBESTOS
5 INDUSTRY?

6 A YES.

7 Q AND ALL BUT -- AND THAT JOHNS-MANVILLE,
8 RAYMARK, GAF RUBEROID, NICOLET, ARE WHAT YOU
9 WOULD CHARACTERIZE AS MAJOR PLAYERS IN THE
10 ASBESTOS INDUSTRY?

11 A YES.

12 Q NOW, I WANT TO ASK YOU ABOUT ONE OF THE
13 DOCUMENTS HERE. THIS IS A DOCUMENT FROM THE
14 ASBESTOS TEXTILE INSTITUTE, IS THAT CORRECT?

15 A YES.

16 Q AND IT SHOWS AS MEMBERS OF THE ASBESTOS
17 TEXTILE INSTITUTE KEASBY-MATTISON, THAT WOULD BE
18 NICOLET, IS THAT CORRECT?

19 A YES.

20 Q JOHNS-MANVILLE CORPORATION?

21 A YES.

22 Q SOUTHERN ASBESTOS COMPANY?

23 A YES.

24 Q RAYBESTOS-MANHATTAN, ASTER-HILL
25 MANUFACTURING COMPANY, DO YOU SEE THAT?

1941

1 A YES, SIR.

2 Q ON THE DAY OF THE MEETING THAT YOU WERE
3 ASKED ABOUT, MARCH 7, 1957, WHERE THESE PEOPLE
4 DECIDED NOT TO FUND THE STUDY BECAUSE IT WAS
5 BEING DONE IN CANADA, DOES IT APPEAR FROM THIS
6 DOCUMENT THAT ANY OF THE DEFENDANTS, AS YOU
7 UNDERSTAND THEM TO BE, WERE PRESENT AT THIS
8 MEETING ?

9 A NO.

10 Q AGAIN, WHO WAS PRESENT WOULD HAVE BEEN THE
11 MAJOR PLAYERS IN THE INDUSTRY, OR SOME OF THE
12 MAJOR PLAYERS ?

13 A IN THE ASBESTOS TEXTILE INDUSTRY?

14 Q YES, SIR. JOHNS-MANVILLE CORPORATION,
15 KEASBY AND MATTISON, RAYBESTOS-MANHATTAN, WOULD
16 THAT BE CORRECT ?

17 A YES.

18 Q AND THIS EXHIBIT, WHERE SOMEBODY NAMED DR.
19 GOODMAN CRITICIZED DR. SELIKOFF, DR. GOODMAN WAS
20 ASSOCIATED WITH RAYBESTOS-MANHATTAN, RAYMARK, IS
21 THAT CORRECT ?

22 A YES.

23 Q AND YOU KNOW THAT THEY'RE NOT A DEFENDANT IN
24 THIS CASE, OR THAT'S YOUR UNDERSTANDING, IS IT
25 NOT, SIR ?

1942

1 A THAT'S RIGHT.

2 Q AND WAS THIS FROM THE MINUTES OF THE
3 ASBESTOS TEXTILE INSTITUTE?

4 A IT WAS.

5 Q AND YOU KNOW, SIR, THAT THIS GROUP OF PEOPLE
6 WHO CRITICIZED DR. SELIKOFF DOES NOT CONTAIN ONE
7 OF THE DEFENDANTS WHO ARE BEFORE THIS COURT IN
8 THIS CASE?

9 A THAT'S RIGHT.

10 Q NOW, I WANT TO ASK YOU ABOUT THE ASBESTOS
11 MAGAZINE, IF I MIGHT. YOU RECALL BEING ASKED
12 ABOUT THIS DOCUMENT, ASBESTOS, SHOWING THE TITLE,
13 FROM MR. ROSSITER TO SUMNER SIMPSON AT RAYMARK,
14 DO YOU RECALL BEING SHOWN THAT?

15 A YES, SIR.

16 Q DOES IT INDICATE THAT A COPY OF THIS LETTER
17 WAS SENT TO ANY ONE OF THE DEFENDANTS WHO ARE
18 BEFORE THIS COURT?

19 A NO.

20 Q ASBESTOS WAS A PUBLICATION THAT WAS
21 PUBLISHED HOW OFTEN?

22 A MONTHLY.

23 Q AND I BELIEVE YOU'VE ALREADY TESTIFIED, HAVE
24 YOU NOT, SIR, THAT IN SPITE OF THE FACT THAT
25 SOMEBODY HERE WANTED TO KEEP AN ARTICLE OUT ABOUT

1943

1 THE DANGERS OF ASBESTOS, THAT IN FACT MANY
2 ARTICLES WERE IN FACT PUBLISHED BY THIS MAGAZINE
3 RELATING TO THE DANGERS OF ASBESTOS?

4 A THAT'S NOT WHAT I SAID. THERE WAS EXACTLY
5 ONE ARTICLE THAT WAS PUBLISHED WHEREUPON SOMEBODY
6 IN THE INDUSTRY MADE IT KNOWN TO THE MAGAZINE
7 THAT THAT WAS NOT DESIRED, AND SUBSEQUENT TO
8 1930, IN MARCH, NO ARTICLES ON ASBESTOS IS
9 APPEARED AGAIN IN ASBESTOS MAGAZINE.

10 Q HOW LONG DID THIS PUBLICATION LAST?

11 A UNTIL 1983.

12 Q AND THIS REFERENCE THAT YOU'VE HAD RELATES
13 TO MR. ROSSITER AND SUMNER SIMPSON OF
14 RAYBESTOS-MANHATTAN, IS THAT CORRECT?

15 A MR. ROSSITER, YES.

16 Q I WANT TO ASK YOU ABOUT ANOTHER PUBLICATION
17 THAT YOU HAVE DISCUSSED.

18

19 THE COURT: HAVE WE LOST A CHART?

20

21 MR. JOSEPHSON: NO. YOUR HONOR, IT MAY HAVE
22 BEEN A BLOW-UP, I MEAN, IT MAY HAVE BEEN
23 SOMETHING THEY PUT ON THE SCREEN THAT I'M
24 THINKING WAS A CHART, BUT I'LL GO ON AND THEN I
25 CAN LOOK FOR THAT LATER.

1944

1

2 BY MR. JOSEPHSON:

3 Q THE SUMNER SIMPSON DOCUMENTS WHICH YOU
4 DESCRIBED ARE PRIMARILY -- ARE ENTIRELY
5 CORRESPONDENCE INVOLVING JOHNS-MANVILLE AND
6 RAYMARK, ARE THEY NOT?

7 A THEY ARE FILES FROM SUMNER SIMPSON OF THE
8 RAYBESTOS-MANHATTAN CORPORATION. THEY INVOLVE
9 QUITE A NUMBER OF COMPANIES.

10 Q YES, SIR. WOULD YOU AGREE WITH ME THAT THE
11 BULK OF THE CORRESPONDENCE IN THE 1930'S INVOLVES
12 CORRESPONDENCE BETWEEN SOMEONE AT JOHNS-MANVILLE
13 AND SOMEONE AT RAYBESTOS-MANHATTAN?

14 A YES, I AGREE WITH YOU.

15 Q AND WHEN WERE THOSE DOCUMENTS FOUND?

16 A 1978, I BELIEVE.

17 Q AND IS IT NOT CORRECT THAT THEY HAD BEEN
18 LOCKED IN A SAFE BY SOMEONE AT
19 RAYBESTOS-MANHATTAN FOR OVER FORTY YEARS?

20 A WELL, I DON'T KNOW WHAT THEY DID WITH THEM,
21 BUT THE DOCUMENTS HAD NOT BEEN MADE PUBLICALLY
22 AVAILABLE UNTIL THAT TIME.

23 Q AND DIDN'T THE SON OF SUMNER SIMPSON, A MR.
24 WILLIAM SIMPSON, PRODUCE THOSE RAYBESTOS
25 DOCUMENTS AT A DEPOSITION WHICH WAS TAKEN OF HIM

1945

1 IN 1978?

2 A SO, I UNDERSTAND, YES.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1946

1 Q THE TWO PRINCIPLE CORRESPONDANTS WERE AN
2 INDIVIDUAL NAMED VANDIVER BROWN OF
3 JOHNS-MANVILLE, IS THAT CORRECT?

4 A YES.

5 Q AND SUMNER SIMPSON OF RAYBESTOS-MANHATTAN.

6 A YES.

7 Q AND THOSE WERE -- THIS CORRESPONDENCE WENT
8 ON FOR WHAT PERIOD OF TIME?

9 A AROUND 1934 UNTIL AROUND 1950, 1954, I
10 BELIEVE.

11 Q NOW, YOU MENTIONED SEVERAL ASSOCIATIONS, AND
12 I WANT TO ASK YOU ABOUT THOSE.

13
14 THE COURT: ARE YOU GETTING AWAY FROM SUMNER
15 SIMPSON AT THIS POINT?

16
17 MR. JOSEPHSON: YES, YOUR HONOR.

18
19 THE COURT: WHY DON'T WE STOP HERE?

20
21 MR. JOSEPHSON: ALL RIGHT.

22
23 THE COURT: LET ME REMIND THE JURY, WE AGAIN
24 HAVE A WEEKEND COMING UP, THE COURT'S EARLIER
25 INSTRUCTIONS ARE STILL IN EFFECT. I NOTICED ONE

1947

1 OF THE T.V. STATION TRUCKS PARKED OUTSIDE. THEY
2 REDISCOVER US ABOUT EVERY FOUR OR FIVE DAYS. SO,
3 TO BE PARTICULARLY CAREFUL AGAIN ABOUT PUBLICITY,
4 AND DON'T DISCUSS THE CASE WITH ANYONE.

5 I KNOW YOU'VE SERVED A LONG TIME ON THIS
6 CASE, AND IF IT'S ANY CONSOLATION, I CAN TELL YOU
7 THAT SOME OF THE PROCEDURES WE HAVE UTILIZED HAVE
8 DRASTICALLY REDUCED THE LENGTH OF TIME OF THIS
9 CASE AND IF IT WERE TRIED IN SOME OTHER PLACE IT
10 WOULD BE CALCULATED TO LAST THREE TO FOUR MONTHS
11 WHICH IS CERTAINLY NOT GOING TO BE THE CASE HERE.

12 I'M ADVISED THAT PLAINTIFFS' BEST ESTIMATE
13 AT THIS POINT IS THAT THEY THINK THEY WILL BE
14 ABLE TO CONCLUDE THEIR CASE NEXT THURSDAY, AND
15 THEN THE DEFENDANTS WILL PRESENT THEIR SIDE. SO,
16 WE ARE MAKING SOME PROGRESS, AND IT'S IMPORTANT
17 THAT WE MAINTAIN THE INTEGRITY OF THE DECISION
18 MAKING CAPABILITY OF THIS JURY AND I WANT YOU TO
19 CONTINUE TO BE PARTICULARLY CAREFUL.

20 I'M GOING TO EXCUSE YOU, AND WE'LL RESUME
21 WITH THE JURY AT 9:00 O'CLOCK MONDAY MORNING.
22 THE JURY CAN BE EXCUSED UNTIL THAT TIME.

23
24 (WHEREUPON, THE JURY WAS EXCUSED FROM
25 THE COURTROOM AT 4:00 P.M., AFTER WHICH THE

1948

1 PROCEEDINGS RESUMED AS FOLLOWS:)

2

3 THE COURT: DOCTOR, YOU MAY STEP DOWN IF YOU
4 WISH.

5 LADIES AND GENTLEMEN, LET ME DISCUSS SEVERAL
6 THINGS WITH YOU. I'M GIVING SOME CONSIDERATION
7 AND HAVE BEEN DOING SOME WORK ON THE CHARGE, AND
8 THERE ARE A NUMBER OF MATTERS THAT I'VE BEEN
9 WRESTLING WITH A LITTLE BIT. FIRST OF ALL, HOW
10 MUCH LAG TIME ARE THE REPORTERS HAVING BETWEEN
11 THE TESTIMONY AND WHEN YOU ACTUALLY GET IT TYPED?

12

13 THE COURT REPORTER: ABOUT THREE HOURS.

14

15 THE COURT: I WISH FOR YOU TO MAKE A COPY
16 FOR ME OF DR. CASTLEMAN'S TESTIMONY EARLIER AS IT
17 RELATES TO FIBREBOARD ONLY, AND I WISH TO BORROW
18 PLAINTIFFS' EXHIBITS. THAT'S ONE I DID NOT WRITE
19 THE NUMBERS DOWN ON, THE FIBREBOARD EXHIBITS THAT
20 MR. BALDWIN USED IN THE PRESENTATION WITH THE
21 CHARTS, SO I MAY REVIEW THEM SOME TIME OVER THE
22 WEEKEND. YOU CAN LEAVE THEM HERE UNLESS YOU NEED --
23 I CAN'T IMAGINE THAT YOU WOULD NEED THEM OVER THE
24 WEEKEND.

25

1949

1 MR. HOUSTON: NO, SIR.

2

3 THE COURT: ALL RIGHT.

4

5 MR. HOUSTON: THE EXHIBITS AND THE CHARTS,
6 YOUR HONOR?

7

8 THE COURT: PLEASE. NOW, ON THE SUCCESSOR
9 QUESTION WITH KEENE. IS IT COUNSEL'S VIEW -- LET
10 ME JUST START WITH MR. WEBER IN THIS RESPECT. IS
11 IT YOUR VIEW, MR. WEBER, THAT FIRST OF ALL
12 WHETHER THIS IS A FACT QUESTION OR A LEGAL
13 QUESTION?

14

15 MR. WEBER: I THINK IT'S GOING TO BE
16 INITIALLY A LEGAL QUESTION, YOUR HONOR, WHEN THE
17 EVIDENCE SHAKES OUT, AND EVENTUALLY IT MAY BE A
18 FACT QUESTION IF IT SURVIVES THE COURT'S
19 SCRUTINY.

20

21 THE COURT: WELL, IS THE QUESTION OF
22 SUCCESSOR LIABILITY A FACT QUESTION OR A LEGAL
23 QUESTION?

24

25 MR. WEBER: INITIALLY, IT'S A LEGAL

1950

1 QUESTION.

2

3 THE COURT: WELL, I KNOW YOU KEEP SAYING
4 INITIALLY. YOU'RE TALKING ABOUT AN INSTRUCTED
5 VERDICT. I APPRECIATE THAT, BUT --

6

7 MR. WEBER: YOU'RE ASKING WHO IT WILL
8 ULTIMATELY BE DECIDED BY?

9

10 THE COURT: YES, SIR.

11

12 MR. WEBER: IF IT'S NOT DECIDED BY THE COURT
13 TO INSTRUCT A VERDICT. I THINK IT'S PROBABLY A
14 FACT QUESTION.

15

16 THE COURT: ALL RIGHT. IS IT GOING TO BOIL,
17 IN YOUR VIEW, BOIL DOWN TO THE COURT BEING
18 REQUIRED TO LOOK THROUGH AN ERIE VERSUS TOMPKINS
19 GLASS, EVEN THOUGH IT MAY BE DARKLY, TO DETERMINE
20 WHAT THE TEXAS SUPREME COURT WOULD DO WITH A
21 PRODUCT LINE LIABILITY QUESTION?

22

23 MR. WEBER: I THINK THAT'S GOING TO BE PART
24 OF IT. OF COURSE, ALL THESE CONTRACTS WERE MADE
25 IN NEW YORK AND NEW JERSEY AND PLACES LIKE THAT.

1951

1 WE'RE TRYING A CASE IN TEXAS AND MY INITIAL
2 IMPRESSION, I HAVEN'T COMPLETED MY BRIEFING, IS
3 THAT YOU'LL PROBABLY LOOK TO TEXAS LAW, BUT I'M
4 NOT AT ALL SURE ON THAT. I'VE BRIEFED IT BOTH
5 WAYS.

6

7 THE COURT: WELL, I'VE HEARD NO EVIDENCE OF
8 THE CONTRACT EXCEPTION TO THE GENERAL RULE.
9 PRICE, YOU ARE WANTED AT THE DOOR. WHETHER I
10 WILL OR NOT, I DON'T KNOW. I'VE READ WITH
11 INTEREST THE GREGGS CASE, AND I'VE ALSO READ WITH
12 INTEREST THE PITTSBURGH-CORNING CASE OUT OF
13 PENNSYLVANIA.

14

15 MR. WEBER: YES, SIR.

16

17 THE COURT: I'M ASSUMING, AND I MAY BE
18 WRONG, BUT I'M ASSUMING I'VE HEARD ALL I'M GOING
19 TO HEAR FROM THE PLAINTIFFS.

20

21 MR. HOUSTON: NO, SIR. THERE WILL BE SOME
22 MORE. THERE WILL BE SOME FROM THE CATALOG.
23 THERE WILL BE SOME CATALOG EVIDENCE, AND THERE
24 WILL BE SOME MORE EVIDENCE FROM THEIR
25 INTERROGATORIES.

1952

1

2 THE COURT: CAN YOU JUST CHARACTERIZE IT FOR
3 ME? I'M NOT GOING TO RULE ON IT TODAY, YOU
4 UNDERSTAND.

5

6 MR. HOUSTON: I UNDERSTAND. KEENE WAS
7 PUTTING OUT PRODUCTS. MY RECOLLECTION IS, I'LL
8 SHOW SOME CATALOGS PUTTING OUT ASBESTOS PRODUCTS,
9 INSULATION PRODUCTS BACK IN THE EARLY SIXTIES,
10 YOUR HONOR. THEY USED REPEATEDLY THE, CONTINUED
11 THE NAME OF BALDWIN-EHERT-HILL PRODUCTS, ALL THE
12 SAME TRADE NAMES AS BALDWIN-EHERT-HILL. THEY
13 CARRIED THE EHERT NAME AND HAVE BEEN IN THE
14 BUSINESS FOR FORTY YEARS.

15

16

17

18

19

20

21

22

23

24

25

1953

1 THE COURT: YOU CONTEND THE EVIDENCE WILL BE
2 THAT AFTER 1968 THE B.E.H., BALDWIN-EHRET-HILL,
3 OR THE EHRET PRODUCTS, WERE CONTINUED TO BE
4 MANUFACTURED JUST AS THEY WERE BEFORE KEENE
5 PURCHASED NINETY-EIGHT PERCENT OF THE STOCK?

6

7 MR. HOUSTON: MY UNDERSTANDING, JUST EXACTLY
8 NO CHANGE AT ALL, SAME NAME, SAME BOXES, SAME
9 EVERYTHING.

10

11 THE COURT: AND IF THAT IS THE EVIDENCE,
12 THEN WE'LL DEAL WITH THAT CONTEXT. OKAY. NOW,
13 THE MOTION TO PRODUCE FILED BY THE PLAINTIFF --
14 NOW, BACK TO PRODUCT LINE, OR BACK TO KEENE, IT
15 APPEARS TO ME THAT I GUESS THE PROPER TIME FOR
16 THE COURT TO DEAL WITH IT IS AT THE CLOSE OF
17 PLAINTIFFS' CASE.

18

19 IN THE MEANTIME I WISH TO READ ANYTHING
20 EITHER SIDE WANTS ME TO READ, SO I CAN BE
21 PREPARED FOR THAT WHEN THE TIME COMES.

22

23 MR. WEBER: ALL RIGHT, SIR.

24

25 THE COURT: PLAINTIFF'S MOTION TO PRODUCE
 RELATING TO COVERAGE AND AGREEMENTS --

1954

1

2 MR. HOUSTON: MAY I ASK THE COURT, IN
3 HELPING ON THE BRIEF, WOULD YOU GIVE US TWO QUICK
4 CITATIONS OF THOSE CASES?

5

6 THE COURT: MR. AIMSWORTH --

7

8 MR. HOUSTON: I ASSUME FROM WHAT YOU SAID
9 THAT THEY WERE --

10

11 THE COURT: YOU HAVE A TEXAS COURT OF CIVIL
12 APPEALS CASE, FAIRLY RECENT, THAT COMPLETELY
13 REJECTS PRODUCT LINE LIABILITY, DISCUSSES THE
14 FOUR EXCEPTIONS, GOES INTO IT IN GREAT DETAIL AND
15 DEPTH, WITH AN ANALYSIS. I DON'T KNOW THE WRIT
16 HISTORY. DID WE FIND THE WRIT HISTORY?

17

18 MR. AIMSWORTH: NO WRIT HISTORY.

19

20 THE COURT: NO WRIT HISTORY. PENNSYLVANIA
21 COURT WITH ONE OF THE DEFENDANTS IN THIS CASE
22 TAKES, WITH AN AIRY APPROACH, TOTALLY OPPOSITE
23 RESULTS.

24

25 MR. HOUSTON: IT SOUNDS LIKE I'M GOING TO

1955

1 LIKE ONE OF THEM, AND DON'T LIKE THE OTHER ONE.
2

3 MR. WEBER: I THINK THAT THE PENNSYLVANIA
4 CASE IS DIFFERENT --
5

6 THE COURT: IT'S LIKE A GOLF SHOT, SONEBODY
7 LIKES EVERY SHOT.

8 NOW, PLAINTIFFS' MOTION TO PRODUCE THE
9 WELLINGTON AGREEMENTS. I REMAIN PERSUADED,
10 REGARDLESS OF SOME VERY MIXED SIGNALS I RECEIVED
11 FROM COUNSEL OVER THE LAST TWO WEEKS, THAT WE ARE
12 STILL NOT IN A LIMITED FUND POSTURE SO FAR AS
13 WELLINGTON IS CONCERNED, AND THAT THERE IS
14 SUFFICIENT SOLVENCY TO SATISFY ANY JUDGMENT IN
15 THIS CASE.

16 NOW, WITH THE COURT BEING SATISFIED OF THAT,
17 TELL ME WHY YOU'RE ENTITLED TO HAVE YOUR MOTION
18 GRANTED.

19

20 MR. HOUSTON: WELL, YOUR HONOR, THEY SAY
21 THAT, BUT THEN THEY TELL US AT THE SAME TIME THAT
22 THEY'VE GOT SUCH A BAD CASH FLOW POSITION THAT
23 THEY CAN'T EVEN TALK SETTLEMENT IN THE CASE ALONG
24 THE TERMS THAT WE WANT TO TALK SETTLEMENT ON.
25

1956

1 THE COURT: I UNDERSTAND THAT WE HAVE
2 RECEIVED SERIOUS MIXED SIGNALS, LIKE I SAY. I
3 REMAIN PERSONALLY SATISFIED THAT THEY'RE IN A
4 POSTURE TO SATISFY ANY JUDGMENT THAT MAY BE
5 ENTERED IN THIS CASE, AND THAT MAY NOT BE THE
6 CONSIDERATION, THERE MAY BE SOME OTHER REASON
7 THAT YOU WOULD BE ENTITLED TO HAVE THE MOTION
8 GRANTED.

9 I ADMIT TO TRYING TO PROCEED CAUTIOUSLY IN
10 THIS RESPECT. I DON'T WANT TO INTERJECT A
11 COLLATERAL ISSUE AFTER TWO WEEKS OF TRIAL IN THIS
12 THING THAT COULD RESULT -- COULD MAKE US DO THIS
13 OVER. THAT'S THE LAST THING I WANT.

14

15 MR. HOUSTON: WE DON'T WANT IT EITHER, YOUR
16 HONOR.

17

18 MR. BALDWIN: YOUR HONOR, I WOULD LIKE TO
19 SPEAK TO THAT. I THINK THAT THE INFORMATION
20 REQUESTED IN THE WELLINGTON, THE MOTION TO
21 PRODUCE, SHOULD BE PRODUCED AT LEAST TO THE COURT
22 IN THE INITIAL STAGE, AND THE COURT CAN RESERVE
23 JUDGMENT AS TO WHETHER THE JURY SEES IT.

24 I THINK IT'S IMPORTANT FOR THE COURT TO
25 HAVE, TO KNOW HOW TO DRAW THE CHARGE, FOR

1957

1 EXAMPLE.

2

3 THE COURT: WELL, YOU'RE GOING BACK TO A
4 MARY CARTER TYPE ANALYSIS.

5

6 MR. BALDWIN: THAT'S RIGHT. THESE PEOPLE
7 HAVE MADE A DEAL BETWEEN THEMSELVES AS TO HOW
8 THEY'RE GOING TO PAY ANY JUDGMENT THAT IS PAID IN
9 THIS -- THAT THIS JURY RENDERS IN THIS CASE.
10 NOW, THAT'S GOING TO EFFECT THE CREDITABILITY OF
11 THE WITNESSES, IT'S GOING TO EFFECT THE WAY THEY
12 TESTIFY, AND I REALLY THINK THAT WE'RE ENTITLED
13 TO SHOW THAT IN ORDER TO SHOW TO THE JURY THE
14 REAL PARTIES IN INTEREST IN THIS CASE, AND THE
15 REASON THAT CERTAIN WITNESSES MIGHT TESTIFY A
16 CERTAIN DIRECTION. IT GOES TO THE ALL IMPORTANT
17 QUESTION OF BIAS AND PREJUDICE, AND I THINK THAT --
18 I DON'T SEE HOW THE COURT CAN PREPARE A CHARGE IN
19 THIS CASE WITHOUT KNOWING WHAT THE WELLINGTON
20 AGREEMENT IS.

21 I DON'T SEE HOW YOU CAN MAKE A DUNCAN
22 SUBMISSION.

23

24 THE COURT: I THINK I CAN CHARGE THIS JURY
25 IN THE MORNING.

1958

1

2 MR. BALDWIN: WELL, I'M SURE YOU COULD, BUT
3 I DON'T KNOW -- I DON'T KNOW HOW YOU CAN
4 DETERMINE WHAT PERCENT. IF THE JURY ANSWERS AN
5 ISSUE THAT ONE OF THESE DEFENDANTS IS ONE OR TWO
6 PERCENT AT FAULT, I DON'T KNOW WHAT EFFECT THAT
7 WILL HAVE, I DON'T THINK THE COURT KNOWS.

8

9 MR. JOSEPHSON: MAY I RESPOND?

10

11 THE COURT: JUST A MINUTE.

12

13 MR. HOUSTON: FROM AN IMMEDIATE STANDPOINT,
14 WHAT HAS JUST HAPPENED IN THE LAST FIVE MINUTES,
15 IT OCCURS TO ME THAT WE'RE ENTITLED TO IT, IF FOR
16 NO OTHER REASON, BECAUSE IT MIGHT LEAD TO THE
17 PRODUCTION OF RELEVANT EVIDENCE.

18 MR. WEBER IS STILL INSISTING, AND INSISTING,
19 AND INSISTING, THAT HE IS ENTITLED TO GET OUT OF
20 THIS THING FOR KEENE.

21 HE REPRESENTS KEENE INDIVIDUALLY. HE IS ONE
22 OF THE LEAD COUNSEL FOR THE WELLINGTON PEOPLE,
23 AND I'M TOLD, BUT THEY WON'T TELL YOU THE EXACT
24 TERMS, BUT I'M TOLD THAT IT DOESN'T MAKE ANY
25 DIFFERENCE TO WELLINGTON AT ALL. IF YOU CONVICT

1959

1 ONE --
2

3 THE COURT: WELL, IT CERTAINLY DOES FROM A
4 PUNITIVE STANDPOINT.
5

6 MR. HOUSTON: WELL, IF YOU CONVICT ONE OF
7 THESE DEFENDANTS -- NO, HE'S NOT TALKING ABOUT
8 PUNITIVE, HE WANTS OUT ON EVERYTHING, IS WHAT
9 HE'S TALKING ABOUT.
10

11 THE COURT: I UNDERSTAND THAT. IF HE GETS
12 OUT ON EVERYTHING HE'S GOING TO BE OUT ON
13 PUNITIVE.
14

15 MR. HOUSTON: BUT THE POINT I'M TALKING
16 ABOUT, THEN THEY TELL ME ON THE OTHER HAND THAT
17 THEY PROBABLY HAVE PUNITIVE COVERAGE, BUT IT WILL
18 DEPEND ON WHAT THE ULTIMATE INTERPRETATION OF
19 TEXAS LAW IS.
20

21 MR. BALDWIN: THEY COULD ALL GET TOGETHER
22 AND AGREE TO PILE IT ALL ON AN INSOLVENT OR NEAR
23 INSOLVENT DEFENDANT, AND WE HAVE NO WAY OF
24 KNOWING. I THINK THAT WE'RE -- IF WE MADE A DEAL --
25

1960

1 THE COURT: NOW, DON'T FORGET THAT THE COURT
2 HAS EXAMINED IN CAMERA DOCUMENTATION IN THIS CASE
3 RELATING TO SOLVENCY ON THE QUESTION OF LIMITED
4 FUNDS, AND CONCLUDED --

5

6 MR. BALDWIN: I'M NOT SPEAKING TO THE
7 QUESTION OF PAYING A JUDGMENT, I'M SPEAKING TO
8 THE CREDITABILITY OF THE WITNESSES.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1961

1 THE COURT: WELL, THERE IS NOT -- YOU'RE NOT
2 GOING TO HAVE AN INSOLVENT DEFENDANT AMONG THESE
3 EIGHT. NOW, IF THEY'RE SUCCESSFUL IN PUTTING IT
4 ALL ON STANDARD, YOU HAVE A PROBLEM.

5

6 MR. BALDWIN: WELL, IF ALL EIGHT OF THEM
7 GANG UP THEY'VE GOT A HECK OF A LOT BETTER CHANCE
8 THAN IF THEY FIGHT FOR THEMSELVES, YOUR HONOR,
9 WHICH IS PRECISELY THE POINT I'M MAKING.

10

11 MR. JOSEPHSON: YOUR HONOR, IT WOULD BE --
12 WHEN MR. BALDWIN CAN PRODUCE THE WITNESS WHO HAS --
13 COLORED HIS TESTIMONY AND TESTIFIED IN A MANNER
14 DIFFERENT THAN THAT WHICH HE HAS TESTIFIED IN THE
15 PAST, I WOULD LIKE TO KNOW THE NAME OF SUCH A
16 WITNESS, AND HOW HE CHANGED HIS TESTIMONY.

17

18 THE COURT KNOWS THE PRINCIPAL WITNESSES IN
19 THIS CASE, BECAUSE THEY HAVE TESTIFIED BEFORE,
20 AND THE COURT KNOWS THE ISSUES UNDER WHICH THEY
TESTIFIED.

21

22 THE COURT: LET ME INTERRUPT YOU.

23

24 MR. JOSEPHSON: YES, SIR.

25

1 THE COURT: IS THERE A PERSON IN EXISTENCE
2 WHO HAS THE INFORMATION SOUGHT IN THE MOTION WHO
3 COULD BE SUMMONED TO THIS COURT WITH TWENTY-FOUR
4 HOURS NOTICE?

5

6 MR. JOSEPHSON: FROM I UNDERSTAND, YOUR
7 HONOR, EACH INDIVIDUAL DEFENDANT HAS --

8

9 THE COURT: NOW MR. JOSEPHSON, YOU'VE
10 STRETCHED MY CREDIBILITY. SOME PERSON KNOWS WHAT
11 THE DEAL IS.

12

13 MR. JOSEPHSON: THERE'S NO DOUBT ABOUT THAT.
14 I THOUGHT YOU WERE TALKING ABOUT INDIVIDUAL
15 FORMULAS. YOUR HONOR.

16

17 THE COURT: INCLUDING INDIVIDUAL FORMULAS.
18 THERE IS SOME PERSON IN EXISTENCE WHO KNOWS THE
19 WHOLE DEAL.

20

21 MR. JOSEPHSON: I'M TOLD, YOUR HONOR, THAT
22 AT A MEETING ATTENDED IN YOUR HONOR'S PRESENCE
23 THAT A COPY OF THE WELLINGTON AGREEMENT WAS
24 HANDED TO YOU.

25

1963

1 MR. BALDWIN: ON THE COPY OF THE WELLINGTON
2 AGREEMENT, YOUR HONOR. I HAVE SEEN IT, AND IT
3 DOES NOT SET FORTH THE PERCENTAGE IN WHICH THE
4 DEFENDANT PAY A JUDGMENT OR SETTLEMENT.

5

6 THE COURT: BACK TO MY QUESTION. IS THERE A
7 PERSON WHO THIS COURT COULD SUMMON TO APPEAR AND
8 TESTIFY OUTSIDE THE PRESENCE OF THE JURY IN THE
9 EVENT THE COURT EVER BECOMES CONVINCED THAT THERE
10 IS SOME MODIFICATION OF A POSITION AS A RESULT OF
11 THE AGREEMENT?

12

13 MR. JOSEPHSON: YOUR HONOR, I AM SURE THIS
14 IS SONEBODY WHO CAN EXPLAIN IT.

15

16 THE COURT: I'M SURE THERE IS TO.

17

18 MR. JOSEPHSON: I DIDN'T MEAN TO SUGGEST
19 THAT THERE WASN'T ANYBODY, I SUGGESTED THAT ONE
20 PERSON MAY NOT HAVE ALL OF THE DETAILS. THAT'S
21 ALL I WAS TRYING TO SAY. BUT WOULD CERTAINLY BE
22 ABLE TO EXPLAIN TO THE COURT --

23

24 THE COURT: WILL YOU PRODUCE TO THIS COURT
25 MONDAY MORNING THE NAME OF A PERSON OR PERSONS

1964

1 THAT THE COURT WILL HOLD IN CAMERA, IF NEED BE,
2 WHO IS AVAILABLE ON TWENTY-FOUR HOUR NOTICE TO
3 APPEAR IN THE EVENT THE COURT PERCEIVES A
4 MODIFICATION OF POSITION THAT MIGHT JUSTIFY THE
5 PLAINTIFFS IN HAVING ACCESS TO THE INTERNAL
6 ARRANGEMENTS OF THE EIGHT PARTICIPANTS?

7

8 MR. JOSEPHSON: I CERTAINLY WILL.

9

10 THE COURT: ALL RIGHT. GIVEN THAT
11 REPRESENTATION, I AM AT THIS TIME DENYING THE
12 MOTION.

13

14 MR. JOSEPHSON: I WONDERED ALSO, YOUR HONOR,
15 IF WE MAY -- I DON'T KNOW IF IT'S NECESSARY, BUT
16 I WOULD LIKE TO FILE A BRIEF IN RESPONSE TO THEIR
17 MOTION ON THIS POINT, ALONG WITH -- I'LL
18 CERTAINLY GIVE THE COURT THE NAME OF THE PERSON,
19 BUT I WOULD LIKE TO FILE --

20

21 THE COURT: I HAVE DENIED IT AT THIS POINT.

22

23 MR. JOSEPHSON: I UNDERSTAND.

24 *

25 THE COURT: I'LL RECONSIDER IF YOU WANT ME

1965

1 TO.
2

3 MR. JOSEPHSON: NO, I DON'T WANT YOU TO. I
4 THOUGHT YOU WERE JUST HOLDING IT OPEN, AND IF YOU
5 WERE BEFORE YOU RULED --
6

7 MR. BALDWIN: AT SOME POINT IN TIME WE WOULD
8 LIKE TO MAKE A RECORD ON THIS.
9

10 MR. JOSEPHSON: I WOULD LIKE TO GIVE THE
11 NAME TO THE COURT IN CHAMBERS, IF I MIGHT, IN
12 CAMERA.
13

14 THE COURT: THAT'S WHYY I EXTENDED THE
15 OPTION.
16

17 MR. HOUSTON: JUDGE, LET'S DON'T FORGET THIS
18 THING, THE LAST THING YOU TOUCHED ON WHEN YOU
19 SAID, QUOTE, I KNOW IT WAS BEING A SLIGHTLY
20 FACETIOUS AND WHATNOT ON YOUR RULING. YOU SAID,
21 "WELL, IF ALL OF THESE EIGHT WELLINGTON
22 DEFENDANTS ARE SUCCESSFUL IN DUMPING LIABILITY
23 SOLELY ON STANDARD, THEN THEY HAVE BEEN
24 SUCCESSFUL IN THE DEFENSE," AND THIS IS WHAT
25 CONCERNS US. MR. WEBER IS LEAD COUNSEL FOR

1966

1 WELLINGTON, HE'S THE SOLE COUNSEL FOR KEENE
2 CORPORATION, AND HIS FIRM REPRESENTS STANDARD,
3 THE VERY ONE YOU'RE TALKING ABOUT, AND TO THE
4 EXTENT THAT THEY --

5

6 THE COURT: OF COURSE, THAT WOULD BE TRUE IF
7 THERE WERE NO WELLINGTON AGREEMENT, THE OTHER
8 EIGHT COULD DUMP IT ON STANDARD, OR ON ANY OTHER
9 DEFENDANT.

10

11 MR. HOUSTON: NOT WITH HIS ONE LAW FIRM
12 REPRESENTING BOTH OF THEM. THEY CAN'T DO IT WITH
13 STANDARD JUST SITTING THERE AND JUST LETTING THEM
14 POLITELY DOING IT.

15

16 MR. BALDWIN: AND THEN YOU GET INTO --

17

18 MR. HOUSTON: SEE, STANDARD HELPS THEM DO
19 IT, AND THIS IS WHERE THE VICE IS.

20

21 MR. BALDWIN: YOUR HONOR, JUST YOU SAID.
22 THEY CAN DUMP IT ON EIGHT IF THERE'S NOT A
23 WELLINGTON AGREEMENT. BUT THE POINT I'M MAKING
24 IS, WHEN THEY GET TO THE POINT WHERE THEY GET
25 TOGETHER AND SAY, "WE'RE GOING TO DUMP IT ON "X"

1967

1 OR "Y", AND IN EXCHANGE FOR THAT MONEY CHANGES
2 HANDS, THEN YOU GET INTO THE SETTLEMENT, AND
3 WE'RE ENTITLED TO KNOW WHAT IT IS, AND WHERE IT
4 IS, AND SO IS THE COURT, AND MONEY IS CHANGING
5 HANDS IN THE WELLINGTON AGREEMENT.

6 THE WAY THEY PAY THESE JUDGMENTS IS NOT ANY
7 DIFFERENT THAN A SETTLEMENT THAT'S MADE UNDER
8 SIMMONS.

9 IN ADDITION TO THAT, THE CASES THAT I'VE
10 CITED TO THE COURT WHERE THEY HELD THAT YOU'RE
11 ABLE TO SHOW INSURANCE IN ORDER TO SHOW THE REAL
12 BIAS, THE REAL PARTY IN INTEREST IN A LAWSUIT.
13 WE DON'T KNOW WHO THE REAL PARTIES IN INTEREST
14 HERE IN THIS LAWSUIT, ALL WE KNOW IS THERE'S SOME
15 LOOSE AGREEMENT OUT THERE WHERE EIGHT DEFENDANTS
16 HAVE GOTTEN TOGETHER, AND THEY'RE DEFENDING THIS
17 LAWSUIT, BUT WE DON'T KNOW WHO THE REAL TARGET IS
18 THE WHOLE TIME WE TRY IT. OUR HANDS ARE TIED, WE
19 CAN'T SHOW THE JURY THAT WE'VE MADE A DEAL.
20

21 THE COURT: THAT'S RIGHT. THAT'S RIGHT.
22 MR. BALDWIN. AS MUCH AS WE HAVE ALL ENJOYED THIS
23 TRIAL, I HOPE WE DON'T DO IT OVER. I'M GOING TO
24 TRY MY BEST.

25 AT THIS TIME I'M GOING TO DENY THE MOTION.

1968

1 YOU 'LL MAKE A REPRESENTATION MONDAY.
2

3 MR. JOSEPHSON: YES.
4

5 THE COURT: IF I, BASED ON MY EXPERIENCE
6 WITH HAVING TRIED A LOT OF THESE CASES, PERCEIVE
7 A POSITION MODIFICATION, I WILL IMMEDIATELY
8 NOTIFY COUNSEL, AND WE'LL RECONSIDER THE
9 QUESTION.

10 THAT'S THE BEST I CAN DO AT THIS POINT.
11

12 MR. BALDWIN: I WOULD JUST LIKE TO BE GIVEN
13 AN OPPORTUNITY TO MAKE A RECORD OF THE SIMMONS,
14 BECAUSE I FEEL VERY SERIOUS ABOUT THIS.
15

16 MR. JOSEPHSON: I HAVE A MOTION.
17

18 MR. SADLER: ARE WE GOING TO SUBMIT DUNCAN
19 ON EACH OF THESE EIGHT DEFENDANTS ?
20

21 THE COURT: I WOULD ANTICIPATE THAT YOU
22 WOULD. DO YOU KNOW HOW TO AVOID THAT?
23

24 MR. SADLER: WELL, THAT'S WHY WE NEED THE
25 AGREEMENT, SO WE'RE NOT -- THIS IS WHY -- I DON'T

1969

1 SEE HOW IN THIS WORLD IT CAN POSSIBLY BE
2 REVERSIBLE ERROR FOR US TO HAVE DISCOVERY WITH
3 THE AGREEMENT, NOT INTO EVIDENCE, TO KNOW WHAT IT
4 IS SO THAT WE'LL KNOW WHETHER OR NOT IT GOES INTO
5 EVIDENCE.

6

7 MR. HOUSTON: THEY TELL US THE SAME PEOPLE
8 ARE GOING TO PAY IT, YOUR HONOR, BUT REGARDLESS
9 OF WHICH ONE YOU STICK. NOW, THIS APPLIES IN THE
10 FACE OF THE DOCUMENT. THIS IS WHAT THEY TELL US.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1970

1 THE COURT: HOW IS IT DIFFERENT FROM AN
2 INSURANCE CONTRACT, AN INSURANCE AGREEMENT?
3

4 MR. SADLER: WELL, WE'RE ENTITLED TO KNOW
5 THE INSURANCE CONTRACT UNDER DISCOVERY, AND WE
6 OUGHT TO BE ENTITLED TO KNOW THIS UNDER
7 DISCOVERY.

8

9 THE COURT: YOU'RE ENTITLED TO KNOW THE
10 EXTENT OF COVERAGE, BECAUSE IT ASSISTS YOU IN
11 NEGOTIATION. WE HAVE PASSED THE POINT --
12

13 MR. SADLER: AND NOW WE'RE TALKING ABOUT A
14 DUNCAN SUBMISSION WITH THE CHARGE TO THE JURY.

15

16 THE COURT: RIGHT.
17

18 MR. BALDWIN: AND CASES HOLDING IN THE BRIEF
19 THAT I CITED, THAT THE COURT SHOULD NOT SUBMIT
20 THEIR POSITIONS, WHICH ARE MEANINGFUL, AND THAT'S
21 EXACTLY AND PRECISELY WHAT THIS COURT WOULD BE
22 DOING IS SUBMITTING AN ISSUE THAT IT DOESN'T
23 MATTER HOW THIS JURY ANSWERS.

24
25 THE COURT: WELL, IF YOU ARE CORRECT IN THAT

1971

1 POSITION, IS THAT NOT CORRECTABLE POST-VERDICT?

2

3 MR. BALDWIN: THE DAMAGE IS DONE THEN.

4

5 THE COURT: HOW IS THE DAMAGE DONE?

6

7 MR. BALDWIN: THE CASE HAS BEEN TRIED, WE
8 DON'T KNOW WHAT BIAS AFFECTS WHAT WITNESS, WE
9 DON'T KNOW THE REAL PARTY AT INTEREST WHEN THEY
10 PUT A WITNESS ON THE WITNESS STAND, WE DON'T KNOW
11 HOW TO GO ABOUT CROSS-EXAMINING HIM BECAUSE OF
12 HIS BIAS OR PREJUDICE, BECAUSE WE DON'T KNOW
13 WHO'S REPRESENTING HIM, WE DON'T KNOW --

14

15 THE COURT: WELL, I CAN SEE THIS TRIAL
16 DEGENERATING TO A POINT WHERE THE FOCUS IS ON THE
17 FACT THAT AN AGREEMENT EXISTS AMONGST EIGHT
18 DEFENDANTS, AND I THINK -- I THINK THAT WOULD BE
19 A SERIOUS MISTAKE THAT WOULD PLACE THE WHOLE
20 RESULT IN JEOPARDY.

21

22 MR. BALDWIN: WE DON'T WANT TO DO THAT, BUT
23 WE WOULD LIKE TO KEEP IT IN PERSPECTIVE.

24

25 WE DIDN'T MAKE THIS AGREEMENT, THEY MADE

THIS AGREEMENT.

1972

1

2 MR. JOSEPHSON: YOUR HONOR, I HAD A MOTION
3 ON ANOTHER AGREEMENT WHICH --

4

5 THE COURT: GO AHEAD.

6

7 MR. JOSEPHSON: -- THE COURT, I BELIEVE,
8 MADE, WITH AN ORDER. IT HAS COME TO MY ATTENTION
9 THAT OF MR. BALDWIN'S CASES, SOME THIRTY-THREE
10 BELONG TO THE CASE OF JAMES DRAKE VERSUS
11 JOHNS-MANVILLE SALES CORPORATION, AND I DO NOT
12 KNOW IF SAID CASES ARE BEING CONSIDERED IN THE
13 CLASS. BUT IF THEY ARE, WE WOULD CALL TO THE
14 ATTENTION OF THE COURT AN AGREED ORDER BY ALL
15 PARTIES, INCLUDING MR. BALDWIN AND ALL OF THE
16 DEFENSE COUNSEL, SIGNED BY THE COURT ON DECEMBER
17 8, 1980 --

18

19 THE COURT: THIS IS THE MATTER THAT YOU HAD
20 MENTIONED TO ME EARLIER?

21

22 MR. JOSEPHSON: YES, YOUR HONOR, INDICATING
23 THAT IN THE EVENT THAT THE CASES CAN'T BE SETTLED
24 AFTER PRETRIAL DISCOVERY, THEN THIS CASE SHALL BE
25 TRANSFERRED PURSUANT TO 28 USC 1404(A), TO THE

1973

1 UNITES STATES DISTRICT COURT, MIDDLE DISTRICT OF
2 TENNESSEE, NASHVILLE DIVISION, FOR TRIAL ON THE
3 MERITS. THE ORDER SIGNED AND ENTERED ON DECEMBER
4 8, 1980. MR. BALDWIN IS CERTAINLY HERE
5 REPRESENTING TWELVE PLAINTIFFS IN A CASE CALLED
6 MAYFIELD, BUT WE BELIEVE THAT, AND WE MOVE, THAT
7 THIS CASE THAT THESE PLAINTIFFS, IF THEY ARE IN
8 FACT BEFORE THE COURT, BELONGING TO THE DRAKE
9 CASE, BE SEVERED OUT AND THE CASE TRANSFERRED AND
10 TRIED IN IT'S ENTIRETY IN NASHVILLE, TENNESSEE.

11 IN THE ALTERNATIVE, WE WOULD ASK THAT ANY OF
12 THE MINI TRIALS AFTER JUDGMENT IS RENDERED HERE,
13 ALTHOUGH WE DO NOT SEE HOW THAT COULD BE POSSIBLE
14 TO HAVE A JUDGMENT RENDERED HERE TRIED UNDER
15 TEXAS LAW WHEN ALL OF THESE CASES PROBABLY ARE
16 GOVERNED BY TENNESSEE LAW, BUT ALTERNATIVELY WE
17 WOULD ASK THAT THE MINI TRIALS BE TRANSFERRED TO
18 THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT
19 OF TENNESSEE, NASHVILLE DIVISION.

20 BUT WE SEE A SERIOUS CONFLICT OF LAW
21 PROBLEM, BECAUSE THESE CASES PROBABLY WOULD HAVE
22 BEEN GOVERNED IN THEIR ENTIRETY, INCLUDING ACTUAL
23 AND PUNITIVE DAMAGES, UNDER TENNESSEE LAW AND NOT
24 TEXAS LAW. SO, WE THINK FOR THAT REASON THAT THE
25 ENTIRE THIRTY-THREE DRAKE CASES SHOULD BE

1974

1 TRANSFERRED TO THE UNITED STATES DISTRICT COURT,
2 MIDDLE DISTRICT OF TENNESSE.

3

4 THE COURT: NOW, I DON'T KNOW WHERE I AM ON
5 THIS THING. I'M GOING TO TAKE THAT UNDER
6 ADVISEMENT.

7 MR. BALDWIN, IF YOU CAN, OVER THE WEEKEND,
8 GIVE COUNSEL A COPY OF THE ORDER THAT YOU SAY YOU
9 HAVE, I WOULD LIKE TO HAVE A COPY ALSO, AND IF
10 YOU CAN DETERMINE WHETHER THE LISTED, I GUESS
11 THEY'RE LISTED, WHETHER THE CASES LISTED ARE IN
12 FACT IN OUR INVENTORY OF CASES IN THIS CLASS,
13 WE'LL DEAL WITH IT AT SOME POINT SOME WAY.

14

15 MR. BALDWIN. RIGHT. I WOULD LIKE TO WAIT
16 UNTIL MONDAY --

17

18 THE COURT: I DON'T KNOW WHERE I AM ON THAT
19 QUESTION.

20

21 MR. BALDWIN: I HAVEN'T HAD ANY NOTICE OF A
22 MOTION, AND I WILL NOT --

23

24 MRS. HOUSTON: YOUR HONOR, IF I CAN HELP ON
25 THAT, IF I'M IN ERROR, THEY WERE INCLUDED AND

1975

1 THEY WERE CHECKED AS PART OF THE MCGOVERN
2 PROTOCOL, CHECKED ON, WE'VE BEEN IN TRIAL TWO
3 WEEKS, I'M CLASS COUNSEL, AND I CERTAINLY DON'T
4 WANT TO DISTURB IT AGAIN. THIS THING CAN PROCEED
5 TO JUDGMENT, AND IF THE WORSE EVER COMES, YOU CAN
6 SEND THE MINI TRIALS BACK TO TENNESSEE.

7

8 THE COURT: WE'LL JUST --

9

10 MR. HOUSTON: I JUST DON'T WANT TO TAKE IT
11 OUT AGAIN AND --

12

13 THE COURT: -- DEAL WITH IT AT SOME POINT,
14 BUT IT IS A MATTER THAT CERTAINLY HAS TO BE DEALT
15 WITH.

16 NOW, I HAVE ONE OTHER MATTER ON MY LIST.

17 MR. WEBER HAD A REQUEST REGARDING THE MASTER.

18 YOU HAD REQUESTED SOME MODIFICATION OR SOME
19 ADDITIONAL INFORMATION, AND THE MASTER SAID HE
20 WAS INCLUDING ALL OF IT EXCEPT TWO THINGS, IS
21 THAT CORRECT?

22

23 MR. WEBER: HE HAD TOLD ME THE OTHER DAY,
24 MR. SADLER AND I HAD DISCUSSED THIS BRIEFLY, HE
25 TOLD ME THE OTHER DAY THAT HE HAD NO PROBLEM

1976

1 FURNISHING THE INFORMATION REQUESTED, EXCEPT THAT
2 AS TO TWO ITEMS, THAT THE COURT HIMSELF WOULD
3 HAVE TO DECIDE THOSE ISSUES.

4 I HAVE SINCE TALKED WITH MR. --

5

6 THE COURT: NOW, YOU ARE FAMILIAR WITH THE
7 FACT THAT I HAVE HAD ABSOLUTELY NOTHING TO DO
8 WITH WHAT HE'S DONE OR THE MANNER IN WHICH HE'S
9 DONE IT --

10

11 MR. WEBER: YES, SIR.

12

13 THE COURT: -- FROM EITHER FORM OR SUBSTANCE
14 CONTENT?

15

16 MR. WEBER: I UNDERSTAND BY CONVERSATIONS
17 THAT HE IS BREAKING OUT THE CASES BY ATTORNEY, BY
18 PLAINTIFF'S ATTORNEY, WHICH I BELIEVE HAD NOT
19 BEEN DONE PREVIOUSLY.

20 AND IT'S FURTHER MY INFORMATION, YOUR HONOR,
21 THAT HE'S EXPECTING TO HAVE SOME ADDITIONAL
22 THINGS DONE BY MONDAY, TOGETHER WITH INFORMATION
23 TO BE FURNISHED TO EVERYBODY. IF THAT'S SO, I
24 THINK AFTER HAVING TALKED TO MR. WILLIAMS, WHO I
25 BELIEVE HAD TALKED TO MR. MCGOVERN, AND I TALKED

1977

1 TO HIM BRIEFLY AFTER HE WAS TALKING TO PRICE,
2 THAT WE PROBABLY ARE NOT GOING TO BE ABLE TO
3 DISCUSS ANYTHING MEANINGFULLY AT THIS TIME UNTIL
4 WE GET THAT ADDITIONAL INFORMATION.

5

6 THE COURT: WELL, IN OTHER WORDS, I DON'T
7 NEED TO DEAL WITH --

8

9 MR. WEBER: I DON'T BELIEVE YOU DO.

10

11 THE COURT: I TRUST YOU'LL CALL IT TO MY
12 ATTENTION?

13

14 MR. WEBER: INDEED I WILL, YES.

15

16 THE COURT: YES, MA'AM.

17

18 MS. CLARK: I'VE BEEN VERY QUIET, JUDGE.

19

20 THE COURT: I'VE NOTICED.

21

22 MS. CLARK: TRYING TO STAY OUT OF THE WAY.

23

24 THE COURT: CONSISTENT WITH THE STONEWALLING
25 POSITION THAT YOU TOOK ON THE STIPULATIONS.

1978

1

2 MS. CLARK: YES, SIR. AFTER THAT I DECIDED
3 I WAS GOING TO BE DOWNSHILL FROM THERE, SO I
4 THOUGHT I WOULD JUST GET OUT OF THE WAY. JUDGE,
5 I JUST WANTED TO MAKE IT CLEAR THAT EVERYBODY,
6 ALL THE PLAINTIFFS, ARE AWARE OF THE FINANCIAL
7 SITUATION, INSURANCE SITUATION, AND CORPORATE
8 WORTH, OR LACK OF WORTH, OF STANDARD,

9 I HAVE MADE A TWO MILLION DOLLAR OFFER TO
10 SETTLE ALL THE CLASSES TWO WEEKS AGO, MR. UMPHREY
11 AND MR. THOMPSON AGREED TO TAKE A PER CASE
12 PORTION OF THAT. THIS OFFER TO MR. BALDWIN AND
13 MR. HOUSTON, AND WHOEVER ELSE, WHATEVER EQUALLY
14 IT WOULD COME OUT TO, OBVIOUSLY IS STILL OPEN,
15 HAS NEVER BEEN WITHDRAWN.

16 I EVEN TALKED TO MR. SADLER, IF THEY WERE
17 AFRAID OF PERHAPS MY INADVERTENTLY GETTING SOME
18 DUNCAN SUBMISSION ON ME, THAT IF THEY WANTED TO
19 JUST LET ME GO VOLUNTARILY, I WOULD LEAVE AND
20 NEVER COME BACK, BUT MY RESPONSE FROM THAT WAS,
21 "WE WON'T LET YOU GO, NO WAY, NO HOW."

22 BUT I DON'T WANT THE RECORD, EVEN THOUGH I'M
23 BEING A LITTLE FACETIOUS AT THIS POINT, TO
24 INDICATE THAT SOMEHOW I'M SITTING THERE NOT
25 TRYING TO GET OUT OF THIS CASE, OR NOT

1979

1 REPRESENTING THAT I WOULD AT ANY TIME MAKE THE
2 SAME AGREEMENT WITH THESE PLAINTIFFS AS I HAVE
3 WITH MR. UMPHREY'S AND MR. THOMPSON'S PLAINTIFFS.
4 THEY'RE WELL AWARE OF THE SITUATION THAT WE HAVE,
5 AND I DON'T REALLY PERSONALLY, IF I CAN HAVE A
6 PERSONAL PRIVILEGE POINT, LIKE MR. HOUSTON'S
7 IMPLICATION, MAYBE NOT VERY VEILED, THAT, YOU
8 KNOW, I'M SOMEHOW TRYING TO TAKE THE FALL FOR THE
9 OTHER -- OR YOU WERE THE ONE THAT DID THAT JUDGE,
10 BUT I KNOW YOU WERE BEING FACETIOUS. BUT THAT
11 I'M IN THERE HELPING THEM COME UP WITH THIS.

12 I DON'T KNOW WHAT THEIR AGREEMENT IS, AND I
13 DON'T WANT TO KNOW, ALL I KNOW IS THAT I'M NOT
14 INVOLVED IN IT, AND IF THEY'LL AGREE TO SETTLE
15 WITH ME TODAY, IT WILL BE A DONE DEAL. SO, I
16 THANK YOU.

17

18 THE COURT: ALL RIGHT. SINCE WE'VE BEEN
19 DEALING WITH LETTERS FOR THE PAST TWO DAYS, I'LL
20 SHARE ONE LETTER WITH YOU BEFORE YOU GO HOME, IT
21 WON'T TAKE BUT A MINUTE. THIS IS A LETTER FROM
22 AN AUSTIN ATTORNEY TO MR. BILL WHITEHURST, WHO I
23 UNDERSTAND IS COORDINATING THE LAWYER TOUR
24 BUSINESS. WHO IS IT FOR, MR. AIMSORTH?

25

1980

1 MR. AIMSWORD: THE STATE BAR WAS GOING TO
2 MEET IN PARIS THIS SUMMER.
3

4 THE COURT: IT HAS TO DO WITH CANCELLING
5 PART OF THE TOUR. WE CAN GO OFF THE RECORD,
6 GENTLEMEN.

7

8 (WHEREUPON, THERE WAS AN OFF THE RECORD
9 DISCUSSION, AFTER WHICH THE PROCEEDINGS RESUMED
10 AS FOLLOWS:)

11

12

13 THE COURT: ENJOY YOUR WEEKEND. WE'LL
14 RESUME AT 9:00 O'CLOCK MONDAY MORNING.
15

16 THE MARSHAL: ALL RISE.

17

18 (WHEREUPON, THE PROCEEDINGS WERE IN RECESS
19 FROM 4:40 P.M., MARCH 21, 1986, UNTIL MONDAY MORNING
20 AT 9:00 O'CLOCK A.M., MARCH 24, 1986, AT WHICH
21 TIME THE FOLLOWING OCCURRED:)

22

23

24

25